

Freedom of Information (Amendment)(No 2) Bill

Notes

Public sector contractors

Clause 1 extends the FOI Act to “public sector contractors”. It also brings Academy schools within the scope of the FOI Act.

“Public sector contractors” are defined as bodies with contracts with a public authority which are valued at more than £1 million and last for more than 12 months.

A “public sector contractor” is a contractor who (a) is contracted to provide a service which the authority itself is required to provide (eg social services, operation of prisons) (b) is contracted to provide any other service directly to the public (c) is not involved in providing services to the public but whose contract may have implications for public health and safety or the environment. This would apply to, for example, construction or maintenance contracts.

The FOI right of access would only apply to information about contracts with the public authority - not to the contractor’s other contracts.

Where a contractor was brought under the Act only because the contract may have health and safety or environmental implications, only information about those matters would be accessible under the Act. A firm contracted to clean the windows at a government department might fall within the Act in relation to the health and safety implications of the work (eg objects falling off scaffolding onto the pavement) but other matters to do with such a contract would not be caught.

Time for compliance with requests involving the public interest test

Clause 2 of the bill would limit the extra time that authorities are allowed to take to respond to requests which involve the Act’s public interest test.

At present, authorities must respond to FOI requests within 20 working days, unless the authority has to consider whether to disclose exempt information on public interest grounds. (The Act’s public interest test applies to many, though not all, of the exemptions.) In these cases, section 10(3) of the Act allows the authority to take “such time as is reasonable in the circumstances” to reach its decision. In practice this sometimes leads to delays of several months.

The bill would limit authorities to an additional 20 working days, but no more, in such circumstances. For most authorities this would require such requests to be dealt with within a maximum of 40 working days.

An exception is made for the National Archive and other records authorities, whose standard response period is 30, not 20, working days, to allow them to consult the authority which supplied the record to them about disclosure. These authorities would also be limited to a further 20 days, ie they would have to deal with requests involving the public interest test within a maximum of 50 working days.

Ministerial veto

Clause 3 of the bill would abolish the ministerial veto, contained in section 53 of the FOI Act. This allows ministers to overrule any decision which the Information Commissioner or Information Tribunal takes requiring a government department to release information on public interest grounds.

Clause 3(1) would repeal section 53 of the Act. Clause 3(2) would repeal various references to section 53 elsewhere in the Act.

Fees regulations

Clause 4 of the Bill would require any changes to the fees regulations under the Act to be made by the 'positive resolution' procedure in future. At present they are dealt with under the 'negative resolution' procedure.

Under the present arrangements changes to the fees regulations, which can severely restrict the right of access, would go through the Commons automatically unless objected to. Even if objected to, they would be discussed only in a committee of MPs, not by the whole House of Commons. The change proposed by the bill would make it possible for such changes to be debated and voted on by the full House of Commons.

Campaign for Freedom of Information

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