

Freedom of Information

Annual Report on proposals for bringing fully into force those provisions of the Freedom of Information Act 2000 which are not yet fully in force.

Presented to Parliament by the Secretary of State for Constitutional Affairs pursuant to section 87(5) of the Freedom of Information Act 2000

Ordered by the House of Commons to be printed 29th November 2004

Produced by DCA Corporate Communications November 2004 DCA 58/04.

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1. Foreword

By Lord Falconer,
Secretary of State,
The Department for Constitutional Affairs



I am pleased to be able to lay before Parliament the fourth report on bringing fully into force those provisions of the Freedom of Information Act 2000 which are not yet fully in force.

Full implementation of the Freedom of Information Act is, at the time of writing, only a month away. The introduction of the Freedom of Information Act marks a real and important culture change to the way official information is treated: a change to the way we are governed.

I am proud to be the Minister responsible for finally implementing on 1 January 2005 a proper right to freedom of information. I believe that the right to know is a fundamental one. Government's connection with the public depends on the public knowing why decisions have been made.

If decisions have to be publicly explained, the better they will be taken. The Act presents a great opportunity for all public authorities to build trust and make the process of government at every level more transparent and accountable.

This Report details what action has been taken by my Department in this final year before full implementation of the Freedom of Information Act. It also details the actions taken by other departments as well as authorities across the public sector in preparation for 1 January 2005.

A great deal of work has been done in this final year before full implementation and this Report contains many examples of best practice in implementation. I am confident that this substantial programme of work will enable public authorities to make a success of Freedom of Information and to realise the benefits of greater openness to both government and the citizen.

*Charlie
Falconer*

2. Major New Developments During the Year

2.1 MISC 28 – Ministerial sub-committee on Freedom of Information

The Prime Minister announced the establishment of a Ministerial Committee on Freedom of Information (MISC28) to Parliament on Thursday 27 May 2004. The Committee was established to oversee the Government's strategy on Freedom of Information, particularly as government departments make final preparations for the full implementation of the Freedom of Information Act in 2005.

Composition

Secretary of State for Constitutional Affairs (Chair)
Chancellor of the Exchequer
Secretary of State for Foreign and Commonwealth Affairs
Secretary of State for the Home Department
Secretary of State for Environment, Food and Rural Affairs
Secretary of State for Transport
Secretary of State for Scotland
Secretary of State for Defence
Secretary of State for Trade and Industry
Attorney General
Minister for the Cabinet Office and Chancellor for the Duchy of Lancaster
Parliamentary Under Secretary of State, Department for Constitutional Affairs (Lord Filkin then Baroness Ashton)

Terms of Reference

“To oversee the Government's strategy on Freedom of Information and its preparations for the commencement of the Freedom of Information Act 2000.”

2.2 Guidance

The DCA has published a suite of guidance aimed at both front-line desk officers, Freedom of Information (FOI) specialists and lawyers in government departments. Centrally produced guidance is needed to ensure that a complex piece of legislation with multiple interfaces to other legislation and information access regimes is consistently and appropriately applied. All sections of the DCA Guidance is available on the Department for Constitutional Affairs' Freedom of Information website (www.foi.gov.uk) and will serve as a useful reference tool for all public authorities.

DCA's guidance is split into four distinct sections to provide advice and assistance to all levels of officials within government departments.

Guidance on Processing Requests

This provides practical procedural guidance and is aimed at front-line desk officers, who will handle the majority of Freedom of Information requests. It provides detailed information on what a request is, what information is covered by a request, and how to respond to requests. It is a living document and will evolve as practice and procedure advance with the implementation of the Act.

Introduction to Exemptions

The introduction to exemptions is also aimed at front-line desk officers, who will have to have an awareness of the various exemptions in the Act, and will need to have an appreciation of when they should be applied.

Summaries of Exemptions

This document provides brief summaries of the exemptions under the Freedom of Information Act and provides key points to take into account when considering whether a particular exemption applies to the information requested.

Exemptions Guidance

This document is a detailed and comprehensive examination of each of the 23 exemptions. It analyses the use of each exemption and provides an in depth study of the considerations which will have to be taken into account when considering the application of the exemptions. This guidance is aimed primarily at FOI specialists and lawyers.

The Exemptions Guidance was produced in full consultation across Whitehall between March and July 2004. All the Exemptions Guidance chapters were made available to departments for comment from June 2004 and will continue to be maintained and revised as 'a living document' in line with policy developments and emerging case law following the full implementation of the Freedom of Information Act.

The Guidance does not replace the need to consider carefully each request for information and the public interest in releasing or withholding information. It will help to ensure that exemptions are used appropriately and consistently by officials in government departments and the wider public sector.

2.3 Access to Information Central Clearing House

In July 2004, the Government agreed that requests under the information access regimes should be co-ordinated by a Central Clearing House within the Department for Constitutional Affairs.

The DCA Access to Information Central Clearing House was established in September 2004 to assist officials dealing with requests under the Freedom of Information Act, the Environmental Information Regulations and the Data Protection Act.

The Clearing House is an expert advice centre to which requests can be referred by central government departments for further assistance when assessing the duty to release or withhold information.

2.4 Communications and Awareness strategy

A communication strategy for raising of Freedom of Information awareness across central government, public authorities and the general public has been put in place. The strategy is designed to raise public awareness of the new rights and in public authorities of their responsibilities under the Act.

As part of this strategy, DCA Ministers have discussed FOI in speeches, newspaper interviews and articles aimed at central government, public authorities and the general public and will continue to articulate FOI in speeches and newspaper interviews in the run up to full implementation.

There has also been an extensive programme of training and awareness raising across central government.

2.5 Freedom of Information website

The Freedom of Information website (www.foi.gov.uk) was launched on 1 July 2004. The site is a one-stop shop for anyone interested in Freedom of Information, and contains information for members of the public, practitioners and researchers. The domain name is non-departmental so that no knowledge of Whitehall structure and responsibilities is needed in order to locate the information.

The site has four main areas:

- How to use the Act – an FAQ-style guide for members of the public on how the Act works and their rights under it.
- Understanding the Act – more in-depth information about the exemptions, bodies covered, and secondary legislation.
- Implementing the Act – based on the Model Action Plan produced by DCA to assist public authorities in implementing the Act, this area includes resources, Ministerial speeches and information on the DCA's own implementation project.

- Background to the Act – details of the history of the Act as well as the DCA's annual implementation reports to Parliament, and the work of the Lord Chancellor's Advisory Group on Implementation.

All the resources produced by DCA to assist central government and other public authorities in implementing the Act are available from www.foi.gov.uk.

The site also includes:

- the fullest list of public authorities subject to the Act (updated every month);
- contact details for all the major departments and stakeholders involved in implementing the Act;
- links to all secondary legislation made under the Act;
- copies of all publications issued by the DCA relating to Freedom of Information.

2.6 Increased coverage of public authorities under the Act

This year two orders were made under section 4, bringing 30 new public authorities within the scope of the Act and removing 12 bodies which had ceased to meet the necessary conditions for inclusion. The new bodies added included:

- The Architects Registration Board.
- The Committee on Radioactive Waste Management.
- The Fuel Poverty Advisory Group.
- The Legal Services Complaints Commissioner.
- The Royal Hospital at Chelsea.

A full list of those public authorities brought within the scope of the Act can be found in "Secondary Legislation" at paragraph 4.2.

2.7 The Code of Practice on Access to Government Information

The Code of Practice on Access to Government Information is the current information access regime for central government and various non-departmental public bodies.

The Code will cease to exist when the Freedom of Information Act 2000 comes into force on 1 January 2005. Unlike the Freedom of Information Act, the Code is non-statutory, although the Parliamentary Commissioner for Administration has the power to investigate complaints about non-compliance with the Code referred to her through a Member of Parliament.

The Government has recently published its Monitoring Report on the Code for 2003 which shows that there was a 3.9% decrease on the number of Code requests recorded in 2002.

However, there was an increase in the percentage of requests answered within the 20 working day target for responding, rising from 92.8% of requests in 2002 to 95.9% of requests in 2003.

Additionally, the percentage of Code requests refused decreased in 2003. 16.87% of Code requests were refused in 2003, compared with 20.0% in 2002. The Parliamentary Commissioner for Administration received 39 complaints relating to the Code in 2003, compared with 42 received in 2002.

The Information Commissioner and the Parliamentary Commissioner for Administration (the Ombudsman) have published a joint memorandum outlining arrangements for the transfer of relevant responsibilities following the implementation of the Freedom of Information Act. The document sets out the procedures for dealing with those complaints which are either on-going or which occur after January 2005 and which involve matters coming potentially within the jurisdiction of both organisations. A full copy of the memorandum can be found in Annex B.

3. Programmes and Plans to Assist Authorities to prepare for Freedom of Information

3.1 Department for Constitutional Affairs Project Plan

The Department has built on work undertaken since 2000 to ensure the successful implementation of the Freedom of Information Act. In March 2004 the Department published a Project Initiation Document, including a business case, which formally set out the scope of the programme for the implementation of the Act. The Initiation Document forms the basis of the management of the Freedom of Information implementation project and it sets out the timetable for implementation and provides a summary of the proposals for monitoring the operation and effectiveness of the Act.

A Freedom of Information Project Board, comprising of cross-Whitehall expertise, has also been established. The Board meets on a monthly basis and provides strategic oversight of the project.

The projects continue to monitor the risks associated with successful implementation and a comprehensive risk register has been developed for that purpose. The Project Board is kept informed about the main risks to the project through monthly highlight reports.

3.2 Production of Guidance

The DCA has published a suite of guidance aimed at both front-line desk officers and FOI specialist and lawyers in government departments. Centrally produced guidance is needed to ensure that the requirements of the Freedom of Information Act are consistently and appropriately applied. All sections of the DCA Guidance are available on the Department for Constitutional Affairs' Freedom of Information website (www.foi.gov.uk) and will serve as a useful reference tool for all public authorities.

More detailed information on the DCA Guidance can be found in "Major New Developments During the Year" at paragraph 2.2.

3.3 Networks

Since January 2004, the Department has been communicating information on freedom of information, best practice and guidance to regional and county FOI discussion forums of local authorities.

The Department has worked with these networks to promote two way FOI communication exchange and to share best practice between central government and local government. The Department has delivered 15 FOI presentations to these various networks. Further presentations are planned until December 2004.

During the presentations to the wider public sector FOI practitioners are encouraged to cascade information and key messages on FOI within their organisations. At the same time the importance of support from senior management within the organisation is stressed.

The Department for Constitutional Affairs is also engaged in a programme of activities to foster networks of Freedom of Information practitioners within central government, and to promote two way information exchange between Whitehall and the wider public sector in England, Wales and Northern Ireland.

These networks are being used to facilitate information sharing and communication between key stakeholders within the Whitehall FOI community and the wider public sector.

3.4 Model Action Plan

In December 2003, the Department produced a Model Action Plan (MAP) setting out the steps to be taken by public authorities to ensure that they are ready for implementation and providing a tool for authorities to assess their preparedness. The MAP is divided into five 'Objectives':

- Leadership and Policy
- Training and Awareness
- Information and Records Management
- Customers and Stakeholders
- Systems and Procedures

The Model Action Plan was distributed to all local authority Chief Executives and is available on www.foi.gov.uk.

3.5 Managing Information and Training Guide

DCA has also developed a booklet called *Managing information and training: a guide for public authorities in implementing the Freedom of Information Act and the Environmental Information Regulations*.

The purpose of the guide is to help public authorities to prepare for implementation of the Freedom of Information Act and the Environmental Information Regulations. The guide suggests a system for managing internal information and training and maintaining compliance standards in future.

The guide explores the kinds of issues that public authorities might need to consider when planning information and training in order to meet their overall strategy for compliance with the Freedom of Information Act and the Environmental Information Regulations.

The guide is for all public authorities, whether central government departments, local authorities or other public authorities subject to the Freedom of Information Act.

3.6 Freedom of Information logo

A Freedom of Information logo has been designed.

The logo is intended to be a unique, universally recognised symbol of FOI for all public authorities, and to raise FOI awareness amongst the general public. The logo has been sent to public authorities on CD-ROM, and it is printed on FOI awareness-raising materials, and is also available from the FOI website www.foi.gov.uk.

Further information about the Freedom of Information website, www.foi.gov.uk, can be found in "Major New Developments During the Year" at paragraph 2.5.

3.7 Awareness raising materials

The Department has sent FOI awareness raising materials – pens, coasters and posters which all draw attention to the FOI website www.foi.gov.uk – in order to publicise the new rights among central government and public authority officials.

The Department is also considering placing a range of articles in specialist magazines advertising the Act through case studies of the benefits to individuals.

A poster and leaflet on the Act are being distributed to public libraries, citizens' advice bureaux and other outlets used by the general public to raise awareness of the Act and to inform the public of their new statutory rights.

The Department is also conducting research into public perceptions of information rights. This research will provide a baseline of current attitudes which can be used to measure change once the Act has been introduced.

4. Secondary Legislation

4.1 Section 4 orders

Section 4 of the Freedom of Information Act 2000 gives the Secretary of State the power to update the list of bodies in Schedule 1 to the Act. Organisations or offices which meet the conditions in section 4 can be added to the Schedule by Order under section 4(1). Once a body or office ceases to meet those conditions, it can be removed from Schedule 1 by Order under section 4(5).

The Freedom of Information (Additional Public Authorities) Order 2004 came into force on 19 April this year adding 30 new public authorities, and the Freedom of Information (Removal of References to Public Authorities) Order 2004 came into force on 29 June, removing 12 redundant references.

The making of Orders under section 4 is an annual exercise carried out by the Department for Constitutional Affairs to ensure that the coverage of the Act is kept up to date.

The full list of public bodies added to Schedule 1 of the Act in 2004 are:

- A local fisheries committee for a sea fisheries district established under section 1 of the Sea Fisheries Regulation Act 1966
- The Advisory Committee on Organic Standards.
- The Advisory Committee on Statute Law.
- The Architects Registration Board.
- The Chemical Weapons Convention National Authority Advisory Committee.
- The Committee on Radioactive Waste Management.
- The Distributed Generation Co-Ordinating Group.
- The East of England Industrial Development Board.
- The Fuel Poverty Advisory Group.
- Her Majesty's Commissioners for Judicial Appointments.
- The Independent Review Panel for Advertising.
- The Independent Review Panel for Borderline Products.
- The Legal Services Complaints Commissioner.
- The London and South East Industrial Development Board.
- The North East Industrial Development Board.
- The North West Industrial Development Board.
- The Pesticides Forum.
- The Police Advisory Board for England and Wales.
- The Postgraduate Medical Education and Training Board.
- The Prison Service Pay Review Body.
- The Public Private Partnership Agreement Arbitrator.
- The Renewables Advisory Board.
- The Royal Hospital at Chelsea.
- The South West Industrial Development Board.
- The Sustainable Energy Policy Advisory Board.
- The West Midlands Industrial Development Board.
- The Yorkshire and the Humber and the East Midlands Industrial Development Board.
- A central advisory committee established under paragraph 24 of the Health and Personal Social Services (Northern Ireland) Order 1972.
- An advisory committee established under paragraph 25 of the Health and Personal Social Services (Northern Ireland) Order 1972.
- Obstetrics Committee.

4.2 Section 5 orders

Section 5 of the Freedom of Information Act 2000 allows the Secretary of State to designate, for the purposes of the Act, any individual not listed in Schedule 1 of the Act nor capable of being added to Schedule 1 by any section 4(1) order, but who:

- “Appears to [him] to exercise functions of a public nature, or
- is providing under a contract made with a public authority any service whose provision is a function of that authority.”

No orders have yet been made under section 5, as implementation has concentrated on the public sector first. There will be a public consultation about the scope of section 5 in early 2005. In the light of this, Government departments will consult with the organisations that they consider may be designated as public authorities under section 5. An order will be laid in Autumn 2005 affecting the majority of organisations to be covered by section 5, to come into force in January 2006 once the main Act has been operating in the public sector for a year.

4.3 Fees

Sections 9, 12 and 13 of the Freedom of Information Act 2000 contain provisions enabling the Secretary of State to make fees regulations under the Act. These set out the circumstances in which authorities may charge for dealing with a request for information.

A public announcement outlining the basic structure of charging for information under the Act was made by the Secretary of State for Constitutional Affairs on 18 October 2004. The Fees Regulations were laid before Parliament at the end of November. The broad outline of the fees policy is:

- For central government, there will be no charge for the time taken to locate, sort, redact or edit material (the ‘marginal cost’) up to a cost limit of £600. £600 is the current upper cost limit for Parliamentary

Questions. Time taken to consider whether material is exempt will not be included in these calculations.

- The upper cost limit for those public authorities outside central government (including local authorities, the health service, schools and the police) will be set at £450.
- If the cost of answering the request exceeds the upper cost limit, the public authority in question can refuse to answer, answer without charge, or charge up to the full cost of replying, at its discretion.
- All public authorities will be able to charge the full cost of disbursements including copying or printing and sending out information. DCA will issue guidance on what these charges should be.

More detailed guidance, including how to calculate the cost of answering a request, how to calculate disbursements, and special circumstances that will apply to archives and trading funds or public authorities required to charge for their services, will be published at the same time as the Fees Regulations.

4.4 Section 10 (4) – Time limits for compliance with a request

Freedom of Information requests should be answered promptly, and will usually have to be met within 20 working days. Section 10(4) of the Act allows the Secretary of State to make regulations to extend the time limit up to 60 working days in specified circumstances. An order under section 10(4) has been laid before Parliament, and, subject to Parliamentary approval, will come into force from 1 January 2005. The order allows that:

Schools will not count school holidays for the purposes of calculating the 20-working day limit within which requests must be answered. This is in response to concerns that there might be no appropriate person able to respond to FOI requests during school holidays (particularly during the long summer holidays).

The National Archives, Public Record Office of Northern Ireland and other appropriate records authorities or places of deposit as defined in the Public Records Act 1958, will have a 10-working day extension in cases where:

- a request for information that relates to information in a transferred public record that has not been designated as open information; and
- where it is necessary to determine whether the information is exempt by a provision of Part II of the Act; and
- where it is necessary to determine whether the duty to confirm or deny is excluded by a provision of Part II.

These bodies have a particular duty under section 66 of the Act to consult with the relevant department on whether an exemption applies in cases where records have not been designated as open – the extension recognises the particular difficulties this could create.

In accordance with section 10(5), the Information Commissioner will be given discretion to extend the time limits for responding to requests where it would be impossible to obtain the information within 20 working days, in the following cases:

- when public authorities have to consult with posts, governments or companies abroad; or
- if the information requested is held by an individual actively involved in an operation of the armed forces, or in the preparations for such an operation.

5. Review of Legislation Prohibiting the Disclosure of Information

5.1 General

This review arises from the power given to the Secretary of State under section 75 of the Freedom of Information Act to repeal or amend items of legislation passed prior to the Freedom of Information Act which would be capable of preventing disclosure under the general right of access in section 1.

The purpose of this power is twofold. Not only does the power allow for the removal of unnecessary prohibitions on disclosure (and thus the bringing of more information into the public domain), but it also reduces the number of considerations which public authorities must take into account when deciding whether information is releasable under the Act.

Many of these prohibitions on disclosure protect information which would also be covered by one of the exemptions available under FOI. The repeal or amendment of such prohibitions may not in practice result in the information being released. However, their repeal will simplify the decision-making process for public authorities in that they will only have to consider one statute, the Freedom of Information Act, in deciding whether disclosure is possible.

Furthermore, it is hoped that applicants will be better able to understand decisions to refuse disclosure based on the standard FOI exemptions, rather than through reliance on other legislation as well.

5.2 Reports on the Review

The review of prohibitions which may fall within the scope of this power has been ongoing for a number of years and is now reaching its conclusion. Two reports have already been published, and are available at <http://www.foi.gov.uk/understand.htm>.

A third and final report will be published in spring 2005. So far, 430 items of legislation have been identified and considered.

5.3 Scope of the power to repeal or amend

Whilst considering whether these items fall within the scope of the section 75 power, many questions have arisen as to their interaction with the duty to disclose under the Freedom of Information Act, and particularly with the exemption in section 44 of the Act (that the disclosure is prohibited by another enactment).. Statutory interpretation is a complex and technical area of law, and ultimately only the courts can rule as to the proper construction of legislation.

Section 75 states:

75. - (1) If, with respect to any enactment which prohibits the disclosure of information held by a public authority, it appears to the Secretary of State that by virtue of section 44(1)(a) the enactment is capable of preventing the disclosure of information under section 1, he may by order repeal or amend the enactment for the purpose of removing or relaxing the prohibition.

*(2) In subsection (1)-
"enactment" means-*

(a) any enactment contained in an Act passed before or in the same Session as this Act, or

(b) any enactment contained in Northern Ireland legislation or subordinate legislation passed or made before the passing of this Act;

(3)... "information" includes unrecorded information.

Fundamental to the use of this power is that the enactment in question must be capable of prohibiting disclosure of information under section 1 of the Freedom of Information Act.

This means that:

The provision in question must actually prohibit disclosure. Provisions which provide a discretion to refuse disclosure will fall outside this power. This also eliminates provisions which require that a public authority 'have regard to the need for excluding' specified information from publication since this is expected to be part of the normal process of dealing with Freedom of Information requests.

The provision must apply to information held by bodies or offices which are public authorities subject to the Freedom of Information Act. (It may also apply to other organisations which are not subject to Freedom of Information, but the section 75 power will only enable amendment in respect of its application to public authorities.)

It must apply to requests for information under s.1 of the Act. This places outside the power provisions which relate to the information to be included in or excluded from a report, which relate to the copying of certain information between organisations, or which prohibit disclosure in response to specific access regimes other than Freedom of Information.

The provision in question must contain the prohibition on disclosure. A power to make secondary legislation, or to issue certificates or notices containing prohibitions on disclosure may not of itself be within the scope of section 75. (Any secondary legislation made under such a power may be within the scope of section 75 in its own right if it contains a prohibition on disclosure.)

Section 75(2) defines an 'enactment' as having been passed before or in the same session as the Freedom of Information Act 2000 (i.e. before 30 November 2000). Legislation passed after this date is outside the scope of the s.75 power. This is because all legislation passed after the Freedom of Information Act is expected to take account of the right of access and protection provided by the Freedom of Information Act exemptions.

Where a provision does not prohibit disclosure under the Act, it cannot be amended using

section 75. Such a provision, by necessary implication, will not come within the scope of the exemption in s.44(1)(a).

5.4 Repeal or Amendment

The power in section 75 can be used to either repeal or relax prohibitions on disclosure. It may not always be appropriate to completely repeal a prohibition. In some cases, the information protected is considered so sensitive that a criminal sanction exists against disclosure, which may need to remain in place. In others, the prohibition on disclosure is contained within a section or paragraph dealing with other matters as well, making complete repeal impractical or inappropriate. Many of the provisions which have been considered form part of procedural rules for courts or tribunals. Because of the need to maintain consistency between individual sets of rules, and particularly between rules passed before and after November 2000, it will be more appropriate to make any amendments to all such rules simultaneously by means other than an Order under section 75 of the Freedom of Information Act. Similarly, the provisions of Part 9 of the Enterprise Act 2000 have replaced a large number of prohibitions on disclosure with a consistent disclosure regime for consumer and competition information.

Finally, the Government accepts that some provisions may simply not be suitable for repeal or amendment, even though they fall within the scope of the section 75 power. Provisions meeting any one of the following four criteria may be retained:

- The provision protects information obtained under compulsion;
- The provision applies also to organisations which are not public authorities for FOI purposes, and it would not be practical or sensible to have different disclosure regimes;
- The provision implements an obligation on the UK stemming from international law; or
- The provision is specific in the information to which it applies, and a limited access regime (e.g. disclosure in summary form) exists.

This should not be taken to imply that all provisions which meet one of these criteria will be retained.

5.5 Sunset clauses

The majority of the provisions which have been agreed for retention prohibit disclosure of information in perpetuity. The Government is of the view that this is excessive, since it means that the information would still be secret in many hundreds or thousands of years time. The majority of the exemptions in the Freedom of Information Act fall away after 30, 60 or 100 years, reflecting the fact that the sensitivity of information diminishes with age.

Where possible, the Government is committed to the insertion of sunset clauses into prohibitions agreed for retention. Such clauses would disapply the prohibition on disclosure in relation to information over a given age. Such information would therefore no longer be exempt from disclosure by virtue of section 44(1)(a) of the Freedom of Information Act.

Sunset clauses do not repeal the prohibition, which would still apply in relation to new or younger information, nor do they require the proactive publication of the information. Should a request for this information be received, the public authority would still be free to apply any of the available exemptions (providing that the exemption has not also expired) should they be appropriate and necessary.

5.6 Statistical Summary

Of the 430 provisions so far considered in this review:

- 44 have been repealed or replaced during the course of the exercise by other legislation (including around 25-30 by Part IX of the Enterprise Act 2000);
- 37 are agreed for repeal or amendment by Order under section 75 (of which 8 amendments are to insert a 'sunset clause' ranging from 10-100 years, depending on the information protected);

- 102 will be retained;
- 247 remain under consideration.

5.7 The Freedom of Information Act (Repeal and Relaxation of Statutory Prohibitions on Disclosure) Order 2004

The first Order under section 75 was laid before Parliament in draft on 4 November 2004, and will, (Parliamentary time permitting) come into force on 1 January 2005.

This Order relates to 8 items of legislation:

Repeals

- Biological Standards Act 19, section 5

Amendments

- Factories Act 1961, section 154;
- Offices, Shops and Railway Premises Act 1963, section 59;
- Health and Safety at Work etc. Act 1974, section 28;
- Medicines Act 1968, section 118;
- National Health Service Act 1977, Schedule 11 paragraph 5; and
- Audit Commission Act 1998, section 49

Sunset Clause (100 years)

- Access to Justice Act 1999, section 20.

The amendments made in this Order will also affect other legislation which refers back to these provisions, including:

- Medicines Act 1968 (Application to Radiopharmaceutical-associated Products Regulations 1992);
- Medicines for Human Use (Marketing Authorisations Etc.) Regulations 1994;

- Medicines for Human Use (Clinical Trials) Regulations 2004
- Electrical Equipment (Safety) Regulations 1994
- Gas Appliances (Safety) Regulations 1994
- Notification of New Substances Regulations 1993
- Pressure Equipment Regulations 1999
- Personal Protective Equipment Regulations 2002
- Simple Pressure Vessels (Safety) Regulations 1991
- Supply of Machinery (Safety) Regulations 1992.

Fisheries Act 1981, section 12

Industrial Organisation and Development Act 1947, section 5

London Building Acts (Amendment) Act 1939, section 142

Rent (Agriculture) Act 1976, section 30(4)-(6)

Sea Fish Industry Act 1970, section 14

Secondary Legislation

Fossil Fuel Levy Regulations 1990, paragraph 36

Marketing Authorisations for Veterinary Medicinal Products Regulations 1994, paragraph 14

Milk Marketing Boards (Special Conditions) Regulations 1981, paragraph 7

5.8 Other Legislation Agreed for Repeal or Amendment

The list of provisions below is not definitive, and discussions are ongoing with departments and legal advisors about the repeal or amendment of many other provisions. Those listed below have been agreed as suitable candidates by both their sponsor departments and legal advisors.

Primary Legislation

Aircraft and Shipbuilding Industries Act 1977, section 52

Agricultural Marketing Act 1958, section 47(2) and (3) (as amended)

Agriculture Act 1967, section 24

Agriculture and Horticulture Act 1964, section 13(6)

Cereals Marketing Act 1965, sections 17(2) and (3)(c)

Coast Protection Act 1949, section 25

Covent Garden Marketing Act 1961, section 32

Diseases of Fish Act 1983, section 9

6. Progress Towards Implementation

6.1 Allocation of responsibilities between DCA and the Information Commissioner

In May 2004, the broad understanding that existed between the Department for Constitutional Affairs and the Office of the Information Commissioner in terms of the division of responsibility for the implementation of the Freedom of Information Act within the public sector was clarified by way of a formal statement.

It was agreed that:

- The Department for Constitutional Affairs would be responsible for overseeing the implementation of FOI within central government;
- The Office of the Information Commissioner would be responsible for directing its guidance to all public authorities to which the Act applies and would concentrate its resources on public authorities outside central government.

6.2 Ministerial bilateral meetings with other government departments

Between January and March 2004, Lord Filkin – then Parliamentary Under-Secretary of State for Constitutional Affairs – held bilateral meetings with Ministerial colleagues to assess departments' plans and progress towards full implementation of the Freedom of Information Act.

Meetings were held with:

- Cabinet Office
- Department for Culture, Media and Sport
- Department for Education and Skills
- Department for the Environment, Food and Rural Affairs
- Department of Health
- Department for International Development
- Department of Trade and Industry
- Department for Transport
- Department for Work and Pensions

- Foreign and Commonwealth Office
- HM Treasury
- Home Office
- Ministry of Defence
- Northern Ireland Office
- Office of the Deputy Prime Minister

At the meetings, departments were offered advice on training and awareness raising, FOI request handling procedures, records management and on maximising the benefits of Publication Schemes.

The meetings served to raise the importance of successful FOI implementation at Ministerial level. In general, it was evident that serious consideration was being given to FOI implementation across central government departments.

The appointment of FOI Ministers and board level FOI champions was seen as a significant factor in raising the profile of FOI within departments and raising the profile of FOI as a major change programme.

6.3 Freedom of Information Practitioners' Group

The Whitehall Practitioner's Group on Freedom of Information continues to meet monthly.

It consists of officials with knowledge and practical experience of dealing with open government issues and implementing Freedom of Information within their own departments. The Practitioners' Group deals with common issues relating to the implementation of the legislation and is a useful forum for sharing good practice and ensuring consistency in approach across central government.

The Practitioners' Group also serves as the vehicle through which the Department for Constitutional Affairs asks for reports on the progress made by departments in implementing freedom of information within their organisations.

For this Report, departments were asked to comment on the progress made across a range of areas, and illustrative extracts are provided in the sections below.

6.4 Access to Information Project Board

The Board comprises the Deputy Information Commissioner, officials from the Ministry of Defence, the Department for Environment, Food and Rural Affairs, the National Assembly for Wales, and external experts on FOI. The Board, which meets on a monthly basis, is responsible for, amongst other things:

- Providing direction and, where appropriate, taking strategic decisions affecting the project;
- Approving the overall project definition and plan;
- Approving the major deliverables of the project;
- Ensuring that all necessary preparation, testing and training has been completed before implementation of the Act;
- Ensuring that appropriate action is taken to mitigate the major risks to the project;
- Monitoring the progress of the project.

6.5 Advisory Group on Implementation

The Secretary of State for Constitutional Affairs is also assisted by the Advisory Group on Implementation. This group, the formation of which was announced in the 2001 report, is made up of public sector representatives and independent experts.

The Group advises the Secretary of State on the best practice to adopt and disseminate to public authorities in implementing the Act. Full details of the work of the Advisory Group over the last year appear in Annex A of this report.

6.6 Progress Report – Cultural Change, Training and Awareness

Departments have been making good progress on implementation of training and awareness programmes in the final period before full implementation of the Act.

The majority of departments are now in the final stages of their training programmes, and have offered a variety of training to both senior management, desk officers and staff involved in records and information management.

The following examples provide a snapshot of training activities in some departments, agencies and non-departmental public bodies.

Foreign and Commonwealth Office: Training and Awareness

70% of FCO departments have now received a Freedom of Information awareness raising briefing, and the FCO is on track to meet its target of 100% by the end of December. In addition, all departmental Open Government Liaison Officers (OGLOs) in the UK have received in depth training in FOI in the form of a case handling seminar. These seminars have included the following guest speakers: Rob Evans from the Guardian Newspaper; Graham Smith, the Deputy Information Commissioner; Maurice Frankel, Director of the Campaign for Freedom of Information; and Karl Gardner, FOI Officer in the Irish Department of Foreign Affairs. All speakers provided a useful viewpoint of FOI outside the boundaries of the FCO and prompted stimulating debates.

There is also a one day course in Freedom of Information and Data Protection available. All OGLOs and case handlers are encouraged to attend this, but it is open to all FCO staff. Approximately 615 staff have been trained to date through this format. The one day course will continue into 2005, but it will be superseded by a general introduction to the Act with a FOI e-learning module towards the end of the year. The taught course format will be retained for OGLOs and those who require a more in-depth knowledge of the Act.

Information Management Department produces FOI packs which contains all its guidance and awareness raising material. Copies of this are sent to all OGLOs and case handlers. FCO also has dedicated FOI pages on the FCO intranet, on which all training and awareness raising material is placed.

A programme of overseas training and awareness raising to FCO posts is also in progress. All overseas OGLOs are sent FOI packs and are a vital part of the OGLO network. Targeted training with visits to selected posts and Regional Training Centres, supplemented by video conferencing is currently underway.

Department for Constitutional Affairs: Training and Awareness

The DCA training strategy sets out how the FOI Implementation Project intends to deliver the right training about the Freedom of Information Act and other relevant access to information legislation to the right people at the right time.

The outline training strategy is:

- Increased awareness of information access rights and responsibilities for all staff to be delivered through various media until January 2005. Including the magistrates courts service this extends to around 25,000 staff.
- Expert training in FOI legislation and other information access legislation for members of the Access Rights Unit by September 2004.
- Training on new guidance for those who deal with correspondence (September – December 2004). Approximately 300 – 350 staff will be involved.

The priority was to train those staff directly involved in the processing of information requests, drafting answers to Parliamentary Questions or Ministers cases and those taking decisions on whether information should be released. These staff required

knowledge in the key areas of the legislation and in particular the procedures which would underpin the withholding of information in instances where information is exempt. The target audience's level of understanding was assessed in Spring 2004 using a training needs analysis questionnaire before the training was delivered to ensure the training was pitched at the right level.

The successful delivery of this training will minimise the risk of non-compliance with the relevant legislation and maintain standards of delivery. The training strategy was tested using 'mystery shopper' information requests.

FOI workshops began in September and will go through to December 2004. The main focus of the workshops is to ensure that delegates obtain a basic understanding of the implementation of Freedom of Information Act and know how to deal with difficult requests for information including the application of exemptions and the public interest test. By 30 September, 101 staff had attended a FOI workshop. A further 300 are expected to attend before the end of the year.

The Access Rights Unit has also run awareness events and workshops for the Wales Office and the Scotland Office.

HM Treasury: Awareness raising

HM Treasury has run a number of 'open to all events' on the Freedom of Information Act and why it was introduced. HMT is running further workshops in November/December for all teams.

Team leaders are encouraged to nominate at least one person to attend who will feed back to the rest of their teams. For the teams that are most exposed, HMT is encouraging a higher level of participation.

As well as the 'open to all' events, HMT is including training and advice on preparing for the Act in training for team leaders and in team events.

Freedom of Information and Data Protection are also covered in departmental induction training.

Northern Ireland Office: Training and Awareness

In 2004, 284 staff have attended refresher awareness sessions, 160 staff attended an Information Management Open Day, 15 divisional visits have taken place covering approximately 225 staff and the Office anticipates that 260 staff will receive awareness or full exemption training.

Additionally, there are 77 local information managers who are kept informed of FOI issues at monthly meetings. All new staff are receiving FOI induction training. Further to this, all staff have been sent a leaflet outlining FOI requirements, presentations have been made available on public folders and there have been articles in the staff magazine each quarter. All training has been available to Agency staff.

This work builds on training and awareness provided in previous years. Approximately 700 staff attended awareness raising sessions in 2002 and in 2003 approximately 400 staff had information management training which covered duties under Freedom of Information.

Department for Health: Training and Awareness

FOI awareness has been included in training given to DH staff in connection with electronic records management. Some 75% of the approximately 2,800 DH staff have been covered so far, with the remainder to be trained by the end of 2004.

In addition, 514 members of staff have attended dedicated FOI awareness sessions, with more sessions arranged for the near future. Demand for places at these sessions has increased significantly as FOI implementation proceeds and we expect a further sharp increase as January approaches and beyond.

Department for Education and Skills: Training and Awareness

Presentations – In the last 12 months, over 40 awareness presentations have been carried out at team and divisional level which have been followed by team discussions on the impact in their business areas. There have also been presentations to the Board and Directors, adding to the 60 presentations undertaken in 2001 and 2002. These have involved either all staff of the Division or team, a selected few who cascade the training to others, or to senior management teams (Divisional Manager and team leaders).

In addition, 6 presentations open to all have been held at each of the Department's 5 sites. All presentations have covered the background and social context of FOI, the requirements, identifying information rights, the exemptions, charging, appeals, the current Openness Code, EIRs and Data Protection linkage, FOI's likely impact on the department and tips for preparing for FOI. Depending on the audience, some presentations are 1 hour long or more, but a minimum of 30 minutes. A number of the presentations have been jointly carried out with the Data Protection Officer to cover both FOI and DP.

Roadshows – In November and December 2003, day-long Roadshow events were held at each DFES site opened by a Director. The events stressed the crucial role of records management in compliance with FOI and DP, examples of good and bad practice as well as advice and specially developed material including handouts on FOI, DP and records management and a quiz. The events were publicised by plasma screens in reception and restaurant areas, tray-drops and intranet news centre items. An attention grabbing article with photos was included in our departmental staff magazine which has wide circulation.

6.7 Organisational Responsibilities, Structures and Planning

Departments have well-advanced organisational structures for them to be able to co-ordinate implementation of the Act effectively and to enable them to deal with requests for information in an efficient way when, in January 2005, the right of access comes into force.

In many departments, responsibility for Freedom of Information has been brought together with related areas such as records management and data protection. In some cases a senior official has taken overall responsibility of all related information management issues.

Departments continue to recognise the importance of establishing networks of officials working on FOI. Analysis of FOI implementation overseas identified effective networks as of crucial importance to successful implementation of FOI. The purpose of such networks is to ensure that there is co-ordination so that requests for information are dealt with efficiently and effectively.

Office of the Deputy Prime Minister: Structures (Networks)

Implementation networks have been established with ODPM agencies and the Government Offices (GOs) and regular meetings have been held since last year where progress on implementation is monitored and best practice shared.

Wherever possible, material for awareness raising, training and revised procedures that has been developed in the centre has been shared with the GOs and the Agencies. In particular the GOs and two ODPM agencies have adopted the same training provider as ODPM and have re-used a significant amount of the training material. The GOs also plan to adopt the ODPM FOI logging and tracking system.

Cabinet Office: Structure (Networks)

A network of FOI liaison officers has been established, with at least one Liaison Officer in every business unit. By the end of October 2004, all Liaison Officers will have attended a one day training course. A dedicated web page for Liaison Officers has been established on the Cabinet Office intranet.

Ministry of Defence: Structures

MOD has a comprehensive network of FOI Practitioners which is designed to ensure that there is some local expertise in each major management area. In turn, many of these FOI Practitioners act as Focal Points and have established their own network of contacts in subordinate management areas. The FOI Policy Team meets every other month with the 'top layer' of Focal Points to discuss current issues, pass on guidance, and discuss progress on implementation.

Department for Education and Skills: Publication Schemes networks

A network of Publication Scheme Divisional Representatives was established to create the Scheme and they are responsible for identifying new material and updating existing entries. A meeting of the representatives was held in September 2003 and another meeting is planned for November as part of the Media and Communication strategy.

Records and Information Openness Team has been working with Schools Directorate on the FOI implementation plans for the schools sector, providing advice and assistance as necessary. A Schools' model publication scheme and procedural guidance have been developed and issued on Governornet and Teachernet sites, and sent to all local education authorities.

Department for Agriculture and Rural Development, Northern Ireland: Networks

The Department for Agriculture and Rural Development has a number of implementation networks:

- There is a Records Management (RM) Project Board, which has representatives from each Non-departmental public body (NDPB), agency or group. The Board meets on a regular basis to progress the RM project.
- The Department has established an information management policy group: the Departmental Information Management Committee is comprised of Grade 7 representatives from each NDPB. It meets every 2-3 months to discuss information management policy and training issues.
- The Department also participates in Northern Ireland Civil Service interdepartmental groups on FOI, both at senior management and practitioner level.
- In addition, monthly progress reports are provided to the departmental Management Board. Advice and guidance is given on the Department's Intranet and through a monthly FOI Newsletter and articles in the quarterly staff magazine.

6.8 Administrative Procedures

It is important that departments have appropriate administrative procedures in place to deal with all requests within 20 working days of receipt and they are able to meet publication scheme obligations.

Departments need to ensure that they have the capacity to publish information promptly if it falls into one of the specified classes included in their publication scheme. Many departments have established mechanisms to trigger the publication of information in cases where this material was previously unpublished. Some departments have developed or are in the process of developing content management systems.

Depending on their own unique needs, departments have been putting in place the appropriate structures that are necessary for dealing with requests. It has suited some departments to have a more decentralised system whereby requests are dealt with at the local level, whilst others prefer a more centralised approach.

Whichever structure departments adopt for processing requests, it is crucial that they can track the progress of the handling of a request.

The National Archives: Administrative Procedures

For TNA's corporate information, enquiries will not be handled centrally but will be directed to the local coordinator for the relevant business area. They are responsible for assessing whether we have sufficient information to respond and identifying which legislation (FOI/Data Protection/EIRs) pertains. The coordinator will authorise the use of any exemptions and ensure that a response is sent within the deadlines, including provision of information that can be released. However, the coordinator may assign tasks, such as searching for the information, or formatting it in an appropriate way, to other colleagues. Monitoring will be done by a central unit which will also provide advice and guidance as needed.

All enquiries relating to transferred records of other government bodies (the historic record or archives) will be directed to the enquiries unit in the Reader Information Services Department. Responsibility for searching for, and providing information will be allocated according to staff expertise in the particular subject and workloads. Where information is held in a closed record, the enquiry will be transferred to colleagues in TNA's Records Management Department, who will liaise with transferring departments, as required by s.66.

Foreign and Commonwealth Office: Monitoring

Information Management Department (IMD) has created a database on which FOI requests will be logged and tracked. This will be supplemented with spreadsheets to capture all monitoring data required by DCA.

The database and spreadsheets will be rolled out to all Open Government Liaison Officers (OGLO) and they will be responsible for inputting the requests they have been received on to this. As the administrator of the database, IMD will be able to keep a central overview of it, usefully allowing us to track round-robins and monitor departmental workloads. The OGLO will submit their completed spreadsheets to IMD at regular intervals.

Department for the Environment, Food and Rural Affairs: Administrative Procedures

Requests for information will continue to be dealt with by staff in the relevant policy area, with support from their local Information Manager and from Information Management Department on all requests where exemptions are being considered.

Information Management Department will co-ordinate requests on cross-cutting issues where there is no obvious lead business area. Training is being provided to front line staff (eg helpline, correspondence section) on rapid channelling of requests to the correct business area.

Ministry of Defence: Administrative Procedures

Requests for information to MOD, including the Armed Forces, could be received in any operational or business area of the Department. This includes units on operations: ships, defence establishments and barracks etc.

FOI "Focal Points" have been nominated in all major areas, agencies and trading funds. FOI liaison officers have also been nominated in HM ships, army units and RAF stations. Exact procedures differ from one business area to another but, in general, the system hinges on requests being passed to Focal Points and then being entered and tracked on an Access to Information Toolkit.

Simple requests (for example requests for unit "flyers", recruitment and PR material etc) will continue to be handled as at present, i.e. without recourse to specific FOI procedures.

6.9 Publication Schemes

Sections 19 and 20 of the Freedom of Information Act require each public authority to adopt and maintain a Publication Scheme. A Publication Scheme will specify the classes of information that the authority publishes or intends to publish; the form in which this is or will be done; and whether there is any charge for the information. Each scheme must be approved by the Information Commissioner.

The Information Commissioner's guidance concerning publication schemes states that a wide variety of information should be available:

"Public bodies should not restrict the content of their publication schemes to information about the services they provide. They should also include information about their own internal structures, at least in outline, how their decision-making processes work and how key appointments are made. This will help the public understand how decisions are taken and will help to demonstrate that the public body has discharged its obligation under section 19(3)(b)."

Departments have implemented sound procedures for maintaining their Publication Schemes and ensuring that new, current and informative information is regularly added to their Publication Scheme.

Foreign and Commonwealth Office: Classes of Information

The Foreign and Commonwealth Office Publication Scheme contains a wide variety of classes of information including: news, travel, visas, foreign policy, global foreign policy, European Union, environment, trade and investment, promoting the UK, legalisation, recruitment, objectives and resources, documents and references and NDPBs.

The Publication Scheme includes information relating to areas outside of the core services it provides.

Internal guidance is published in the Scheme where there is a public interest in its content. For example, on the UK Visas website, staff guidance on assessing applications and issuing visas is published. A Consular Handbook is in production and most sections will appear in this Publication Scheme in the Travel class of information.

Several departments have committed themselves to creating a 'culture of openness' demonstrated by their meeting the challenge of making public information that was previously unavailable.

Department for Health: MRSA

The Department for Health now routinely publishes information on local MRSA rates on the DH website and, from 2005 onwards, will publish information about other types of infection (including vancomycin-resistant enterococci, antibiotic associated diarrhoea due to *Clostridium difficile* toxin and post-surgical infection in orthopaedics) on the website.

HM Treasury: Publication of supporting studies

The Treasury is increasingly making available to the public the data and analysis that underpins policy. For example:

- In addition to the Public Expenditure Statistical Analysis (PESA), Main Estimates and Supplementary Estimates that the Treasury publishes, additional data has been published since 2002. This includes the Supplementary Budget Information (SBI) which provides further technical control-related information on the core spending plans presented in departmental reports and also tables reconciling these departmental report tables to the Main Estimates. Further data is also made available through the new Statistics Public Finance and Spending area of the HM Treasury website.
- Major announcements such as the 2003 assessment of the five economic tests for UK membership of the Euro have been underpinned by the publication of supporting studies, including externally commissioned studies on technical economic policy issues.
- Since 2004, the Dear Accounting Officer letters (DAO) which provide specific advice on issues of accountability, regularity and propriety and annual accounting exercises have been made publicly available on the HM Treasury website. These include some letters previously classified as restricted on account of the technical nature of the material contained within the letters.

In order that authorities can provide the most up-to-date and informative publication schemes, the Information Commissioner advises that "...it would be good practice for authorities to keep a log of requests made for information which is not included in their publication schemes and to consider adding the class of information into which it falls as a new class to be covered by the scheme. The log itself could also fall into a class for publication under the scheme." Public bodies are under a duty to keep their publication schemes under review.

Department for Constitutional Affairs: Disclosure Log

As part of its publication scheme the Department for Constitutional Affairs makes available on request a disclosure log of information released under the Code of Practice on Access to Government Information. The information that has been released is also available on request. The Department plans to make the disclosure log and information released under the Freedom of Information Act available on its website from 1 January 2005.

Foreign and Commonwealth Office: Review of Publication Scheme

Information Management Department retains responsibility for the FCO's Publication Scheme and it is reviewed on a monthly basis to check that factual information and contact details are still correct.

The importance of the Publication Scheme, and proactively releasing information to it, is emphasised in our departmental briefings, Open Government Liaison Officer seminars and one day FOI course. Reminders for departments to identify information for the Publication Scheme have also been posted on the FCO Bulletin (a weekly email sent to all staff).

An FOI Proactive Disclosure Board was formed in September to conduct a survey of information that is currently requested by the public from departments and to identify further categories of material to add to the Scheme.

Department for Social Development, Northern Ireland: Review of Publication Scheme

The Department for Social Development Publication Scheme is reviewed on a quarterly basis.

This ensures the ongoing accuracy of the information provided within the Scheme's catalogue. The FOI Team works closely with the department's Internet/Intranet/Press Office colleagues responsible for publications to ensure items of information are included. There is a network of 'publishers' in place across the Department whose role includes ensuring items of information are considered for publication and their respective business area internet/intranet pages are up-to-date.

Departments are encouraged to be proactive and put structures in place that will trigger the publication of information. Some departments have already created a system to achieve this, although it will take time for all departments make similar arrangements.

Department for International Development: Publication Scheme triggers

In order to trigger publication of previously unpublished material, DFID has

- briefed the Secretaries of DFID's Top Committees on their role and responsibilities;
- designated a Publication Scheme Officer in the Open Government Unit to ensure that the Publication Scheme is kept up to date with material available on DFID's intranet (which is already used as a corporate information sharing vehicle).

In addition, the specification for DFID's forthcoming electronic document records management (EDRM) system will require users to mark documents entering the system with an Open Government status and possibly trigger a "workflow" to have the document posted on the FOI scheme.

6.10 Records management

The Modernising Government White Paper set a target of 2004 for government departments and agencies to manage their records electronically. Many departments have reviewed their records management procedures both to meet this requirement and to ensure that procedures meet the requirements laid down in the Code of Practice on Records Management made under section 46 of the Freedom of Information Act.

The National Archives monitors progress towards the 2004 target by departments and agencies on behalf of the Secretary of State for Constitutional Affairs. The most recent assessment indicated that almost half of larger departments were on schedule to meet the 2004 target with over 80% scheduled to complete the following financial year. The assessment revealed that there had been considerable activity to ensure that interim measures to protect electronic information would be in place by the end of 2004 prior to the introduction of an electronic records management system. As most current records are created electronically, the ability to manage them is fundamental for departments to effectively carry out their duties under FOIA as well as modernising their service delivery and policy making.

Department for Constitutional Affairs: E-RM rollout

The Department has comprehensive plans in place to implement e-RM. The DCA in conjunction with its PFI partners Liberata and EDS have selected TRIM Context as the software.

The project is split into two phases. Phase 1 of the rollout is centred on DCA HQ (London). Phase 2 will be mainly to the regions. Rollout of Phase 1 began in April 2004 and is expected to be completed by November 2004. Phase 2 will start in January 2005 and finish in January 2006.

Food Standards Agency: Electronic Records Management

The Food Standards Agency has recently completed the rollout and implementation of FEDS (FSA Electronic Documents System) across the agency, as part of the overall review of our records management procedures necessitated by FOI. Staff have received the appropriate training.

Features of the FEDS system are:

IT features:

- The ability to search and retrieve documents in a single search across the organisation using a free text search or a more structured complex search string.
- Records are secure and unable to be amended or deleted.
- The system contains both official records and working documents – therefore widening the scope of the resource and ultimately reducing the need for general shared drives and large e-mail inboxes in the longer term.
- E-mails can be stored and retrieved in the system – it is integrated with our e-mail client.
- We have a functional subject breakdown to structure our files.
- Any changes to official records, for example correcting mis-files, automatically generates an audit trail.
- We will be using the system to implement ongoing reviews of official records following the Agency's reaching the first review target of 5 years in 2005.
- The system is part of our business continuity and disaster recovery plans.

User features:

- The system is user friendly and is available to all members of the Agency.
- The system prompts users to actively add information via the e-mail client.
- When training users we highlighted the types of material and documentation that should be held on official records.
- An education programme to reinforce user knowledge and understanding of records and document retention is currently being planned.

The system has been added to the induction programme for managers to implement with new members of staff.

The National Archives: Electronic Records Management

A project to introduce electronic records management in TNA was completed last year. An EDRM system (known as "Objective") was rolled out to all TNA staff by 31 December 2003. All of TNA's business records have been created electronically and stored in Objective since then.

The Managing Business Information Project has supported the use of Objective. Departmental network drives were removed in September 2004. Restrictions on personal network drives and mailboxes will be enforced in November 2004. In addition to technical changes, the introduction of a corporate file plan has supported a number of changes to work processes.

6.11 Houses of Parliament

House of Lords

Publication Scheme

Information relating to individual Members' expenses was added to the Publication Scheme in October 2004 as agreed by the House (in January 2003). Guidance on how to make a request for information held by the House administration will be added prior to 1 January. The Freedom of Information Officer is responsible for updating the scheme with new material being identified by contacts in each office.

Tracking System

A database for tracking 'non-business as usual' requests and monitoring compliance has been developed. 'Business as usual' requests will be dealt with under existing arrangements by the House of Lords Information Office and Record Office (for questions relating to the Parliamentary Archives).

The system will support staff by taking them through the process involved in responding to a request including automatically calculating and alerting them to deadlines. Over time it will enable the identification of frequently requested information (which could be added to the publication scheme). It will also provide management information.

Guidance

Guidance has been drafted on the Freedom of Information Act, Data Protection Act and the draft Environmental Information Regulations.

Training

Training on the requirements of the Freedom of Information Act and the Data Protection Act will be provided in 90-minute sessions to all staff who handle correspondence and/or process personal information. The sessions will take place in November 2004.

Separate hands-on training sessions will be run for staff who will use the tracking system.

Some sample requests will be sent to offices after training for treatment as if the Act was in force.

House of Commons

Awareness raising seminars were held during 2004, to give managers an opportunity to discuss how FOI might relate to the information held in their office. More detailed training, including guidance on handling requests, was provided to key senior managers in October. Other members of staff will be briefed by their line managers during November and December. The aim is to encourage all staff to continue with 'business as usual' requests without unnecessary additional administration, and to help prepare staff to identify requests needing more formal handling under the Act.

The first publication of individual Members' allowances expenditure took place on 21 October 2004. This information was added to the House of Commons Publication Scheme. Other policy development work has continued in specific subject areas such as procurement and committees. The aim has been to develop guidance frameworks for staff which encourage proactive publication whenever possible, and highlight areas where exemptions might apply (subject to the particular circumstances of any individual enquiry).

A new enquiry logging system will be implemented in December 2004. This is to be used by the FOI Officer and the Information Office to monitor requests formally handled under the Act.

Work to improve records management practices and to develop consistent disposal practices has continued in partnership with the House of Lords Record Office.

6.12 Northern Ireland

Training and Awareness

Attendance at Information Access training courses is now being co-ordinated by Departmental Training Liaison Officers and appears to be working well.

Decision Maker Part 1 training was completed on 2nd September 2004: in total 473 staff from across the Northern Ireland Civil Service were trained. Based on the 446 questionnaires completed by staff, the response to Part 1 training was very positive:

- 92% rated the content as excellent/good.
- 89% said that the documentation was excellent/good.
- 80% rated the pace as excellent/good.
- 81% stated that the course length was 'OK'.
- 95% reported that the tutor's presentation was excellent/good.
- 98% rated the tutor's knowledge as excellent/good.

Part 2 of the training commenced on 7 September and will continue through to November 2004. Departments will be responsible for ensuring the places allocated to them are filled.

Roadshows started on 27 September 2004 and it is planned to cover 37 government buildings across Northern Ireland. Staff visiting the Roadshows will be able to pick up a 'What you need to know' leaflet and various FOI promotional items. They will have the opportunity to meet their FOI Practitioner and support staff, as well as asking any questions about FOI.

Monitoring Procedures

The Procedures and IT Monitoring Systems subgroup of the Northern Ireland Freedom of Information Practitioners' Group has recently established a formal Project. The Project Board has approved the Project Initiation Document and Business Case and awarded a contract for the development of a bespoke cross-departmental FOI Tracking system.

This system will be used to record FOI requests by all 11 Departments and will be designed to meet the requirements outlined in Department for Constitutional Affairs' generic user specification.

Records management

There is a proposed Northern Ireland Civil Service programme (awaiting confirmation of funds in the final budget), which will see the implementation of one corporate EDRM service across all 11 departments. This will commence in early 2005 to be completed by the end of 2007. Currently, lead implementations of EDRM in three departments have commenced using Tower Software's TRIM Context.

6.13 Local government – proposed amendments to exemptions in Schedule 12a of the Local Government Act 1972

The Access to Information Review Group was established in the summer 2003 to look at access to information procedures in local government. The existing framework concerning access to information on local government was established in 1985 through amendments to the Local Government Act 1972. Schedule 12a of this Act set out a number of exemptions to the release of information.

The Access to Information Review Group produced a set of recommendations on how Schedule 12a should be amended. The Office of the Deputy Prime Minister (ODPM) began a public consultation on the proposals for regulations amending current access to information exemptions set out in Schedule 12a of the Local Government Act 1972. The consultation ended on 29 October 2004. Subject to this consultation, the Government intends to make and lay amending regulations before Parliament so that the changes may come into effect on 1 January 2005, in line with full implementation of the Freedom of Information Act.

6.14 Police

The Association of Chief Police Officers (ACPO) has an established project to manage the implementation of the Freedom of Information Act across the Police Service. The national project was initiated in December 2001 after the Chief Constables Council agreed to provide funding; all forces paid £3,500 to fund the project until January 2005.

A Project Manager (Chief Inspector) and a Project Support Officer were recruited from and are housed by Hampshire Constabulary. The national project uses PRINCE2 project management methodology.

The ACPO FOI Manual of Guidance is in production with the draft manual being around 350 pages long. Research for the Manual of Guidance has been shared out across all forces. Training courses are being delivered, resulting in 350 trained 'central decision-makers' countrywide. These are the individuals that will be applying the Public Interest Test; national training ensures a consistent application of this test across the country. Central decision-makers will have access to each other via the Genesis electronic network and established networking systems.

A framework agreement is being constructed for Case Management Systems to log and process requests. The framework allows all Police Forces, emergency services, local authorities and the Home Office to select one of the chosen suppliers either now or at a later time. Each public authority that signs up to the framework agreement has not only taken advantage of the large discount available in the framework (up to 33% off) but has also saved on the resources to produce a Statement of Requirement, which took approximately 750 hours to produce.

A central referral process has been designed to highlight and monitor requests with national implications. To date several such requests have already been received. When requests fulfil certain criteria, outlined in the Manual of Guidance, they will be referred on to a central team for action. This will allow the Service to

assist applicants by giving a Service response when appropriate as well as co-ordinating individual force responses, to ensure consistency in disclosure.

6.15 National Health Service

NHS established a national project, funded by the DH, with the following aims:

- To ensure the orderly introduction of the Act in the NHS on the basis of good understanding, support and recognition of the benefits conferred by the Act by all NHS organisations in England.
- To ensure that effective Publication Schemes approved on the basis of model schemes by the Information Commissioner are in operation in all NHS organisations in England by 31 October 2003.
- To review and evaluate this implementation plan and recommend how best to take forward the requirement for full access regimes to be in place by 1 January 2005.

The project established pilots in each of the main types of NHS organisations to develop model publication schemes. This proved very effective and model schemes were signed off for each of the main types of NHS organisations and for the independent practitioners (GPs, dentists, opticians and pharmacists).

The project also heightened awareness of FOI through its communications plan. The NHS website was at the heart of this and a marketing campaign promoted this especially to independent practitioners. All NHS organisations in England (more than 400) had a published a publication scheme at the due date.

6.16 Education Sector

DFES has a remit to reduce unnecessary bureaucracy in schools and it has, with Schools Directorate, developed a model publication scheme for schools to adopt which is available on the IC's website, and has offered DFES communication channels as a means of publishing IC material, such as Governor and Teacher magazines.

Provision of guidance

In all cases, however, the IC is the identified contact for guidance. In addition, DFES has prepared procedural guidance for schools which has been issued via Teachernet and Governornet and copied to LEAs.

6.17 National Archives

The National Archives' implementation planning is co-ordinated to cover the constituent bodies of the National Archives, the Public Record Office and the Historical Manuscripts Commission.

Implementation Project

FOI implementation is run as a formal programme. The Director of Strategy, Finance, and Resources, is the programme's Senior Responsible Owner, and chairs the Programme Board.

There are three separate projects that make up the programme:

- Public Service Project: responsible for deliverables that primarily affect TNA's public service functions;
- Closed Records, Places of Deposit and Records Management Outside TNA Project: responsible for deliverables relating to access, other government departments and places of deposit;
- Corporate Records Project: covering TNA's own business records;
- In addition there is the cross cutting Tracking System Project, responsible for procurement and implementation of a system to track FOI, DP and EIR enquiries.

Assurance is provided through project boards and the use of a Programme Assurance Team that acts independently of, but reports to, the Programme Board. There are also formal, regular reports by the Senior Responsible Owner to the Executive Committee the Management Board and Audit Committee.

Training and Awareness

At the time of writing, awareness raising activities have been delivered to 541 National Archives staff. This represents approximately 90% coverage. Training sessions for the remaining permanent staff will take place in October and November 2004. Basic FOI awareness training will be mandatory for all new staff after January 2005 as part of the normal corporate induction procedures.

Annex A – Work of the Advisory Group on Implementation of the Freedom of Information Act 2000

The Advisory Group met three times during the third year it has been operating. Members have contributed to the work of groups administered by the Department for Constitutional Affairs which were developing policy on aspects of the Act. Advisory Group minutes and papers form part of the Department for Constitutional Affairs' publication scheme and are available on the Department's Freedom of Information website, www.foi.gov.uk.

Work of the Advisory Group in the last year

Monitoring progress on implementation

Advisory Group members from the sectors covered by the Freedom of Information Act produced regular written updates on progress towards implementation. These have proved useful tools, forming the basis of discussion at meetings and led to the sharing of experiences and good practice.

Receiving reports on the preparations being made by the Information Commissioner

The Advisory Group receives regular updates on progress towards implementation and preparations in local government from the Information Commissioner's Office. Policy developments have been discussed, as have awareness raising schemes undertaken by the Office. The Information Commissioner tabled a report on FOI preparedness in local government. In relation to this the Local Government Association produced guidance for local government on implementation. Workshops and training for local authorities had also been established.

Sharing resources and best practice between sectors

As part of a focus on how to develop and share information, Dilys Jones (Public Partners) presented a paper on how to best share resources and best practice between sectors, entitled 'Working Smarter'. The paper highlights some approaches to implementation, which are seen to be working well in the public sector, as well as discussing issues for those who are leading on the implementation of legislation in their organisations.

Freedom of Information networks

DCA presented a paper on Freedom of Information networks. The paper set out the strategy for the development of networks for Freedom of Information (FOI). The networks are playing an important part in the process of implementing the FOI Act. In the long term, networks will also play a crucial role in providing for the discussion and resolution of matters of common interest and concern.

The final meeting of the Group took place on 4 November 2004.

Terms of Reference

The Terms of Reference of the Advisory Group on Implementation are as follows:

- To provide advice to the Lord Chancellor to assist him in preparing his annual report to Parliament in accordance with section 87(5) of the Freedom of Information Act 2000 by:
- Monitoring progress on implementation;
- Identifying best practice in information management and recommending approaches to its dissemination in and between types of public authorities;
- Advising on the needs of users of the Freedom of Information Act, how authorities might best meet those needs, and proposing ways of raising the public's awareness of their rights;
- Receiving reports on, and advising on, the preparations being made by the Information Commissioner to ensure procedures are established and guidance produced in a timely manner;
- Promoting a new culture of transparency in public authorities by assisting in the development of training and education programmes;
- To undertake other tasks related to the implementation of the Freedom of Information Act as may be agreed by the Secretary of State for Constitutional Affairs and the Information Commissioner.

The group will meet at least three times a year until the Act is fully implemented.

Membership

Joint Chairs

Lord Filkin then Baroness Ashton
Parliamentary Secretary, Department
for Constitutional Affairs

Richard Thomas
The Information Commissioner

Representatives of Public Bodies

Jeremy White
National Assembly for Wales

Nigel McCormick
*Office of the First Minister and Deputy First
Minister, Northern Ireland*

Jim Duvall
Head of Information Services, *The Local
Government Association*

Ian Mark
Senior Legal Executive, *The National
Association of Local Councils*

Ian Readhead
Deputy Chief Constable, Hampshire
Constabulary, *The Association of Chief
Police Officers*

Christine Miles
Chief Executive, The Royal Orthopaedic Hospital
NHS Trust, *The Health Service Confederation*

Dr Michael Wilks
Chairman of the Ethics Committee, *The British
Medical Association*

Michael Malone-Lee
Vice-Chancellor, Anglia Polytechnic University,
Universities UK

Jane Phillips
Chair, *The National Association of Governors
and Managers*

Stakeholders and Independent Expert Members

Jonathan Baume
General Secretary, *The First Division Association*

Santha Rasaiah
Political, Editorial and Regulatory Affairs
Director, *The Newspaper Society*

Maurice Frankel
Director, *The Campaign for Freedom
of Information*

Christine Gifford
former Metropolitan Police civil servant

Professor Robert Hazell
Director, The Constitution Unit, *University
College London*

David Hencke
The Guardian

Dr Dilys Jones
former Department of Health and Home Office
civil servant

Expert Public Authority Advisers

Nick Jordan
Director of Investigations, *The Parliamentary
Commissioner for Administration*

Sarah Tyacke
The Keeper of Public Records

Ex Officio

Graham Smith
Deputy Information Commissioner

Andrew McDonald
Director of Constitution Directorate,
Department for Constitutional Affairs

Antonia Romeo
Head of Information Rights Division,
Department for Constitutional Affairs

Jiwan Raheja
Head of Customer and
Stakeholder Workstream,
Department for Constitutional Affairs

Liam Collingridge
Secretary to the Advisory Group
Information Rights Division,
Department for Constitutional Affairs

Annex B – Transfer of responsibilities following the implementation of Freedom of Information Act 2000: agreement on transfer of responsibilities for considering complaints about a refusal to provide access to government information between the Parliamentary and Health Service Ombudsman and the Information Commissioner

Introduction

The purpose of this memorandum is twofold. It is, first, to set out the arrangements that will exist between the two offices up until the time that the Code of Practice on Access to Government Information (the Code) ceases to have effect and individual rights of access under the Freedom of Information Act 2000 (the FOI Act) come into force. That is expected to happen in January 2005. The second purpose is to set out the procedures for dealing with those complaints which are either on-going or which occur after January 2005 and which involve matters coming potentially within the jurisdictions of both organisations.

Background

The Code of Practice on Access to Government Information (the Code)

The Code is a non-statutory document. Under its provisions it is possible to apply to bodies covered by the Code for information held by them. If such bodies are minded to refuse to release the information requested, they are required to do so by citing one or more of the Code's exemptions, of which there are fifteen. In cases where such a request has been turned down twice, it is possible (through a Member of Parliament) to ask the Parliamentary Commissioner for Administration (PCA) to investigate that refusal. All bodies that come within the PCA's jurisdiction, a list of which can be found in Schedule 2 to the Act, are covered by the Code. The PCA has been monitoring the Code in this way since it came into force in April 1994. The Health Service Commissioner (HSC) also monitors the very similar NHS Code, which came into force in June 1995: in the case of that Code, complaints do not have to be made via a Member of Parliament.

The Freedom of Information Act 2000

The FOI Act reached the statute books in November 2000. Many of its provisions, including the requirement to provide approved publication schemes, are already in force. However, those sections of the Act that allow for individual rights of access are not expected to come into force until January 2005. Until that occurs, both the Codes referred to in the previous paragraph remain operative. When these statutory rights of access take effect complaints that individual rights of access have been refused under the Act will then become the responsibility of the Information Commissioner, who will continue to retain his existing role in monitoring the operation of the Data Protection Act 1998.

Interim Arrangements

Both offices wish to avoid a situation where those complainants whose information requests have been refused, and who wish to pursue the matter further, have no independent organisation to take up the matter on their behalf. As a result it is intended that the PCA will continue to investigate Code complaints up to the introduction of access rights under the Act. After 31 December 2004 PCA will not take on any new cases for investigation but will conclude any investigations that have been commenced but not completed at that point. This means that, during the early part of 2005, there will in effect be parallel jurisdictions. It is however intended that, in the case of Code complaints coming to the PCA which the PCA would be willing to investigate but where the investigation would probably not be concluded before 31 December 2004, PCA will advise the complainant of their option to wait until January 2005 in order to submit their request under the procedures of the FOI Act.

Post Decision Correspondence

Given that PCA will continue to investigate complaints up to and beyond 31 December 2004 there is a possibility that some complainants will write back to her after that date about decisions she has made on individual cases. The expectation is that, when this occurs, the matter will be dealt with in whatever way seems most helpful to the complainant. Some cases might, therefore, be pursued under the Act whereas others will continue to be dealt with under the terms of the Code. Such cases will be decided on their individual merits, and in discussion with the Information Commissioner where appropriate.

Hybrid Complaints

It is acknowledged that there will be occasions when a complaint received by PCA will be wholly or partly about a breach of the FOI Act and other occasions where a complaint received by the Information Commissioner will include matters of alleged maladministration. The British and Irish Ombudsman Association (BIOA) are currently preparing a protocol to establish broad principles for the referral and handling of such 'hybrid' complaints, which can then be used by all ombudsman and complaint-handling schemes.

Statutory Arrangements

Section 76 of the FOI Act allows the Information Commissioner to disclose information to a number of Ombudsmen if he feels that the information concerned relates to a matter that might form the subject of an investigation by that Ombudsman. Both the PCA and HSC are included in that number. In general terms Schedule 7 to the Act amends various enactments relating to the jurisdictions of individual ombudsmen to enable them to disclose information to the Information Commissioner on a similar basis. These sections of the Act are now in force.

Role of the Information Commissioner in respect of the FOI Act

The FOI Act gives a general right of access to all types of 'recorded' information held by public authorities (and those providing services for them), sets out exemptions from that right and places a number of obligations upon public authorities. A public authority has two main responsibilities under the Act. First it must produce a 'publication scheme' (effectively a guide to the information it publishes) and, once that scheme has been approved, publish information in accordance with it. Secondly it must, subject to exemptions, provide copies of other information on request. The Information Commissioner will therefore deal with enquiries and complaints made about access to information under publication schemes and also with complaints about a failure to grant access to other information not covered by publication schemes following an individual request. Complaints about a failure to provide personal information held about an individual by a relevant body remain a matter for the Information Commissioner but under the provisions of the Data Protection Act rather than the FOI Act.

Summary

The general principle behind all these arrangements is that the complainant should be directed as quickly as possible to the organisation most appropriate for dealing with his or her complaint.

