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## FREEDOM OF INFORMATION (AMENDMENT) BILL 2017

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### Explanatory Memorandum

1. This Bill is promoted by Minister Thomas MHK on behalf of the Cabinet Office.
2. *Clauses 1 to 3* deal, respectively, with the Short Title, Commencement and Expiry of the resulting Act.
3. *Clause 4* stipulates that the remainder of the Bill sets out the details of the amendments made to the *Freedom of Information Act 2015*.
4. *Clause 5* amends section 5(1) of the *Freedom of Information Act 2015* (interpretation) by substituting the following definitions –
  - (a) “any other State” – this definition has been amended for the sake of clarity to make it clear that the term “any other State” includes any Crown Dependency and to extend the definition to include –
    - (i) a territory for whose international relations another State is responsible; and
    - (ii) a constituent part of a federal state.

The term “any other State” is used in sections 24 and 29 of the *Freedom of Information Act 2015*.
  - (b) “information” – this definition has been amended to make it clear that it does not include unrecorded information.
  - (c) “working day” – this definition has been amended to remove paragraph (c) which defines “working day” in the case of an educational establishment.

Paragraph (c) of the definition of “working day” is relevant for the definition of “standard processing period” in section 12(2) of the *Freedom of Information Act 2015*. Rather than rely on paragraph (c) of the definition of “working day” to calculate the standard processing period in respect of requests for information which relate to an educational establishment, the Council of Ministers may instead make regulations under paragraph (b) of the definition of “standard processing period” to prescribe a different period of time in these circumstances.
5. *Clause 6* amends paragraph (a) of section 23 of the *Freedom of Information Act 2015* by substituting the reference to “the Queen” with a reference “the Sovereign for the time being of the United Kingdom”. This language is consistent with that used in section 38 of the Act.

6. *Clause 7* amends section 24(2) of the *Freedom of Information Act 2015* (absolutely exempt information under international agreements about exchange of information) to refer to the term “any other State”.
7. *Clause 8* amends section 29(4) of the *Freedom of Information Act 2015* (international relations) to make the same amendments to that subsection as clause 7 makes to section 24(2).
8. *Clause 9* amends section 34(1) of the *Freedom of Information Act 2015* (formulation of policy) to omit the reference to the Cabinet Office. Now that the Cabinet Office is a Department, it will be caught by the reference to “a Department” in paragraph (a)(i) of subsection (1). A reference to “a Statutory Board” has also been inserted so that the exemption in section 34 extends to information held by a public authority that is a Statutory Board.
9. *Clause 10* repeals section 38(3) of the *Freedom of Information Act 2015* (qualified exempt communications with the Crown) which is not required.
10. *Clause 11* amends section 43 of the *Freedom of Information Act 2015* (review of decisions originally made by the Information Commissioner). Section 43 currently provides for the review of such a decision by the Tynwald Commissioner for Administration (within the meaning of the *Tynwald Commissioner for Administration Act 2011*). As the *Tynwald Commissioner for Administration Act 2011* has not yet been brought into force, clause 12 substitutes the reference to the Tynwald Commissioner for Administration with a reference to “a person appointed for that purpose by the Council of Ministers”.
11. *Clause 12* amends section 45(6) of the *Freedom of Information Act 2015* (information notices) to substitute the references to “advocate” with references to “professional legal adviser”. This is to ensure that communications with legal advisers other than Manx advocates are also protected.
12. *Clause 13* amends section 47(1)(a)(i) of the *Freedom of Information Act 2015* (exception from duty to comply with certain notices) to reflect the fact that the Cabinet Office is now a Department.
13. *Clause 14* inserts a new section 64A into the *Freedom of Information Act 2015* to enable a person to furnish the Information Commissioner with any information necessary for the discharge of his functions under the Act. This section mirrors the equivalent provision in section 53 of the *Data Protection Act 2002*.
14. *Clause 15* amends paragraph 9 of Schedule 3 to the *Freedom of Information Act 2015* (powers of entry and inspection) to substitute the references to “advocate” with references to “professional legal adviser”. This is to ensure that communications with legal advisers other than Manx advocates are also protected. The wording in paragraph 9(4) has also been clarified.
15. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



*Ellan Vannin*

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*Ellan Vannin*

## FREEDOM OF INFORMATION (AMENDMENT) BILL 2017

**A BILL** to amend the Freedom of Information Act 2015; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### **1 Short title**

The short title of this Act is the Freedom of Information (Amendment) Act 2017.

### **2 Commencement**

(1) This Act (other than this section and section 1) comes into operation on such day or days as the Council of Ministers by order appoints and different days may be appointed for different provisions and for different purposes.

(2) An order under subsection (1) may make such consequential, incidental, supplemental, transitional and saving provisions as the Council of Ministers considers necessary or expedient.

### **3 Expiry**

(1) This Act expires —

(a) on the day after its promulgation if all of its provisions are in operation on its promulgation; or

(b) otherwise, on the date after the last provision is brought into operation.

(2) The expiry does not —

(a) revive any enactment amended by this Act as the enactment operated before the amendment commenced;

(b) revive anything not in operation or existing when the amendment took effect; or

(c) affect the continuing operation of the amendment.

1 **4 Freedom of Information Act 2015 amended**

2 The *Freedom of Information Act 2015* is amended as follows.

3 **5 Section 5 amended – interpretation**

4 In subsection (1) –

5 (a) for the definition of “any other state” substitute –

6 | “**any other State**” includes references to –

7 | (a) any Crown Dependency;

8 | (b) a territory of the United Kingdom outside the United  
9 | Kingdom;

10 | (c) a territory for whose international relations another State is  
11 | responsible;

12 | (d) a constituent part of a federal state;

13 | *Example:*

14 | *For (c), Greenland for whose international relations Denmark is responsible.*

15 | *For (d), one of the United States of America.”;*

16 | (b) for the definition of “information” substitute –

17 | | “**information**” means information recorded in any form;”;

18 | (c) for the definition of “working day” substitute –

19 | | “**working day**” means any day except –

20 | | (a) a Saturday, a Sunday, Christmas Day or Good Friday; or

21 | | (b) a bank holiday under the *Bank Holidays Act 1989*.”.

22 **6 Section 23 amended – absolutely exempt communications with the**  
23 **Crown**

24 In paragraph (a) of section 23, for “the Queen” substitute “the Sovereign for the  
25 time being of the United Kingdom”.

26 **7 Section 24 amended – absolutely exempt information under**  
27 **international agreements about exchange of information**

28 In subsection (2) –

29 (a) for “a State,” substitute “the United Kingdom, any other State,  
30 an”;

31 (b) in paragraph (b), for “the State,” substitute “such a State,”.

32 **8 Section 29 amended – international relations**

33 In subsection (4) –

- 1 (a) for “a State,” substitute “the United Kingdom, any other State,  
2 an”;
- 3 (b) in paragraph (b), for “the State,” substitute “such a State,”.

4 **9 Section 34 amended – formulation of policy**

- 5 (1) In subsection (1)(a), for sub-paragraph (ii) substitute —  
6 “(ii) a Statutory Board; and”.
- 7 (2) At the end of subsection (1)(b)(iii), for “and” substitute “or”.

8 **10 Section 38 amended – qualified exempt communications with the**  
9 **Crown**

10 Subsection (3) is repealed.

11 **11 Section 43 amended – review of decisions originally made by the**  
12 **Information Commissioner**

13 For “the Tynwald Commissioner for Administration (within the meaning of the  
14 *Tynwald Commissioner for Administration Act 2011*)” substitute “a person  
15 appointed for that purpose by the Council of Ministers”.

16 **12 Section 45 amended – information notices**

- 17 In subsection (6) —
- 18 (a) in paragraph (a), for “an advocate” substitute “a professional legal  
19 adviser”;
- 20 (b) in paragraph (b), for “a communication between an advocate and  
21 his or her client, or between an advocate” substitute “a  
22 communication between a professional legal adviser and his or  
23 her client, or between such an adviser”.

24 **13 Section 47 amended – exception from duty to comply with certain**  
25 **notices**

26 For subsection (1)(a)(i) substitute —  
27 | “(i) is served on a public authority that is a Department;  
28 | and”.

29 **14 Section 64A inserted – disclosure of information**

30 After section 64 insert —

1 **“64A Disclosure of information**

2 No statutory provision or rule of law prohibiting or restricting the  
3 disclosure of information shall preclude a person from furnishing the  
4 Information Commissioner with any information necessary for the  
5 discharge of his or her functions under this Act.”

6 **15 Paragraph 9 of Schedule 3 amended – communications between**  
7 **advocate and client**

8 (1) For the heading of paragraph 9 substitute —

9 **“9 Communications between professional legal adviser and client”**

10 (2) In sub-paragraph (1)(a), for “an advocate” substitute “a professional  
11 legal adviser”.

12 (3) In sub-paragraph (1)(b), for “any communication between an advocate  
13 and his or her client, or between an advocate” substitute “any  
14 communication between a professional legal adviser and his or her  
15 client, or between such an adviser”.

16 (4) In sub-paragraph (3), for “advocate” substitute “professional legal  
17 adviser”.

18 (5) For sub-paragraph (4) substitute —

19 “(4) In this paragraph references to the client of a professional legal  
20 adviser include references to any person representing such a  
21 client.”





IN THE KEYS

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**FREEDOM OF INFORMATION (AMENDMENT) BILL  
2017**

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**A BILL** to amend the Freedom  
of Information Act 2015; and  
for connected purposes.

Approved by the Council of Ministers  
for introduction in the House of Keys.

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MR THOMAS

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JUNE 2017