



Isle of Man

Ellan Vannin

AT 8 of 2018

**FREEDOM OF INFORMATION
(AMENDMENT) ACT 2018**



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FREEDOM OF INFORMATION (AMENDMENT) ACT 2018

Signed in Tynwald: 16 January 2018
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AN ACT 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 2018.

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.

4 Freedom of Information Act 2015 amended

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

5 Section 5 amended – interpretation

In subsection (1) –

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

▣ “any other State” includes references to –

- (a) any Crown Dependency;
- (b) a territory of the United Kingdom outside the United Kingdom;
- (c) a territory for whose international relations another State is responsible;
- (d) a constituent part of a federal state;

Example:

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

For (d), one of the United States of America. ▣;

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

▣ “information” means information recorded in any form; ▣;

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

▣ “working day” means any day except –

- (a) a Saturday, a Sunday, Christmas Day or Good Friday; or
- (b) a bank holiday under the *Bank Holidays Act 1989*. ▣.

6 Section 23 amended – absolutely exempt communications with the Crown

In paragraph (a) of section 23, for “the Queen” substitute ▣ the Sovereign ▣.

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

In subsection (2) –

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

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

8 Section 29 amended – international relations

In subsection (4) —

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

9 Section 34 amended – formulation of policy

For subsection (1) substitute —

- “(1) Information is qualified exempt information if the information relates to —
- (a) the formulation or development of government policy;
 - (b) communications between Ministers (including, in particular, the proceedings of the Council of Ministers or of any committee of the Council of Ministers);
 - (c) the provision of legal advice or any request for such advice; or
 - (d) the operation of a Ministerial private office.”

10 Section 38 amended – qualified exempt communications with the Crown

(1) For subsection (1) substitute —

- “(1) Information is qualified exempt information if it relates to communications —
- (a) with a member of the Royal Family (other than communications which fall within any of paragraphs (a) to (c) of section 23 because they are made or received on behalf of a person falling within any of those paragraphs); and
 - (b) with the Royal Household (other than communications which fall within any of paragraphs (a) to (c) of section 23 and paragraph (a) above because they are made or received on behalf of a person falling within any of those paragraphs).”

(2) Subsection (3) is repealed.

11 Section 43 substituted – review of decisions originally made by the Information Commissioner

For section 43 substitute —

“43 Review of decisions originally made by the Information Commissioner

- (1) If the public authority that makes a decision in relation to which a person could apply to the Information Commissioner under section 42 is the Information Commissioner —
- (a) section 42 applies as if the references in that section to the Information Commissioner were references to the Tynwald Commissioner for Administration; and
- (b) such of the remaining provisions of this Act (including sections 64 and 64A) —
- (i) as are relevant to enable the Information Commissioner to exercise his or her functions under section 42; or
- (ii) which relate to the exercise of such functions, shall apply, with the necessary adaptations and modifications, to the Tynwald Commissioner for Administration as they apply to the Information Commissioner.
- (2) If —
- (a) the office of the Tynwald Commissioner for Administration is vacant; or
- (b) the Tynwald Commissioner for Administration is unable to act,
- the references to the Tynwald Commissioner for Administration in subsection (1) shall be construed as references to a person appointed for that purpose by the Council of Ministers.
- (3) The Council of Ministers must be satisfied that any person it appoints has the appropriate qualifications, skills and competences to carry out those functions.”

12 Section 45 amended – information notices

In subsection (6) —

- (a) in paragraph (a), for “an advocate” substitute **“a professional legal adviser”**;
- (b) in paragraph (b), for “a communication between an advocate and his or her client, or between an advocate” substitute **“a communication between a professional legal adviser and his or her client, or between such an adviser”**.

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

For subsection (1)(a)(i) substitute –

47 (i) is served on a public authority that is a Department; and **47**.

14 Section 64A inserted – disclosure of information

After section 64 insert –

64A Disclosure of information

No statutory provision or rule of law prohibiting or restricting the disclosure of information shall preclude a person from furnishing the Information Commissioner with any information necessary for the discharge of his or her functions under this Act. **64**.

15 Paragraph 3 of Schedule 2 amended – tenure of office

For paragraph 3(2) substitute –

“(2) The Information Commissioner holds office for a term of up to 5 years, and may (but need not) be re-appointed –

- (a) for a second term of up to 5 years on the expiry of that term; and
- (b) for a third term of up to 5 years on the expiry of the second term.

(3) The Information Commissioner may only be appointed for a maximum of 3 successive terms.”.

16 Paragraph 9 of Schedule 3 amended – communications between advocate and client

(1) For the heading of paragraph 9 substitute –

9 Communications between professional legal adviser and client

(2) In sub-paragraph (1)(a), for “an advocate” substitute **9** a professional legal adviser **9**.

(3) In sub-paragraph (1)(b), for “any communication between an advocate and his or her client, or between an advocate” substitute **9** any communication between a professional legal adviser and his or her client, or between such an adviser **9**.

(4) In sub-paragraph (3), for “advocate” substitute **9** professional legal adviser **9**.

- (5) For sub-paragraph (4) substitute —
- “(4) In this paragraph references to the client of a professional legal adviser include references to any person representing such a client.”

17 Consequential amendment to the Interpretation Act 2015

In paragraph 1 of the Schedule to the *Interpretation Act 2015*, after the definition of “Treasury” insert —

““**Tynwald Commissioner for Administration**” means the Commissioner appointed under section 4(1) of the *Tynwald Commissioner for Administration Act 2011*”.

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