

Freedom of Information

Bringing Section 28 of the Health and safety at Work etc Act 1974 in line with the Freedom of Information Act 2000, and removing other unnecessary barriers to openness in health and safety legislation

Why amend Section 28?

The Health and Safety Commission and the Health and Safety Executive (HSC/E) believe that greater openness with health and safety information improves public understanding of, and helps strengthen confidence in, the health and safety system. To be seen as credible and accountable organisations, and retain and build on the trust placed in HSC/E, we must be open about what we do and how we do it.

We therefore welcome the opportunity that the Freedom of Information Act 2000 (FOI Act) provides to remove the unnecessary restrictions on disclosure imposed by Section 28 of the Health and Safety at Work etc Act 1974 (and by other statutory barriers to disclosure in health and safety legislation¹). With the removal of these obligatory restrictions, the starting point for information covered by Section 28 will be – as it is with other information we hold - that the public interest favours openness. However, there will continue to be circumstances where the public interest in making information available is clearly outweighed by the public interest in maintaining confidentiality. When that is the case, HSC/E will still need to withhold information, and will rely instead on the exemptions in the FOI Act itself.

Why we want your views

We recognise that removing the barriers in Section 28 is likely to attract public interest, and we are keen to respond to and sustain this interest by being as open as possible about what we are proposing to do. The power to amend Section 28 is limited to what is necessary to bring it in line with the FOI Act. So it is important that we make sure expectations are realistic about what changes can be made – otherwise it might appear to others that HSC/E is not committed to greater openness. We have produced some information notes to help explain the background to this work and the factors that have to be

¹ In addition to amending Section 28 of the HSW Act, the proposal is to remove unnecessary barriers to disclosure imposed by:

- Factories Act 1961, section 154;
- Offices, Shops and Railway Premises Act 1963, Section 59;
- Offshore Installations (Inspectors and Casualties) Regulations 1973, regs 6 and 7(4).

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taken into account in amending Section 28 by means of an Order under Section 75 of the FOI Act.

If you have any views or comments on the proposals to bring Section 28 and the other statutory bars to openness into line with the Freedom of Information Act, we would be pleased to hear from you. You can access the information notes, and submit your views, by joining the online topic group. Also, by registering as a group member, you will be able to see other comments and take part in on-line discussion groups. These interactive facilities are being piloted through this exercise. Alternatively, if you would prefer to have paper copies of the information notes and response form sent to you, you can arrange this either online or by contacting:

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Openness and Communications Branch
HSE
Rose Court
2 Southwark Bridge
London SE1 9HS
keith.pritchard@hse.gsi.gov.uk

Your views on these arrangements

In addition to your views on the proposal to amend Section 28, we would also be very interested in your views on our arrangements for public discussion and interaction in the developing proposals.

This discussion exercise is different from the Health and Safety Commission's formal consultation process— eg, on proposals for health and safety regulations or Approved Codes of Practice. Here, HSC/E does not have a statutory role to consult on proposals or advise Ministers, and the change to Section 28 will be made by the Department for Constitutional Affairs. But our experience is that involving the wider public and interest groups as proposals are developed improves the quality of decision-making. We are also keen that the decision-making in this important area of public interest is itself seen to be open and transparent.

Your views on how amending Section 28 will affect you

Finally, we would be interested to know if you think that amending Section 28 in line with the FOI Act will affect you. For instance, as a provider of information to HSC/E, will changing Section 28 raise concerns that your information might not be adequately safeguarded? Or, as a seeker of information, are there types of requests refused in the past which you think the new FOI regime, and the involvement of the Information Commissioner, will require us to treat differently?

Please do participate in this discussion and let us have your views.

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Further information

The following documents are available to view on-line and can be downloaded:

- Note 1 Bringing Section 28 of the Health and Safety at Work etc Act 1974 into line with the Freedom of Information Act 2000 – Some Frequently Asked Questions
- Note 2 (i) Section 28 of the Health and Safety at Work etc Act 1974 – what it does
(ii) Disclosure for the purposes of an Inspector's/HSE's functions – Summary of advice
- Note 3 Section 28 of the Health and Safety at Work etc Act 1974 – full text
- Note 4 What the proposed amendment will do
- Note 5 (i) Some examples of information we would like to release but Section 28 presently prevents us from doing so
(ii) Some examples of information currently not disclosable under Section 28 which we would continue to withhold after Section 28 is brought in line with the Freedom of Information Act
- Note 6 Freedom of Information Act 2000 –
(i) Section 1: General right of access to information
(ii) Section 75: Power to amend or repeal enactments prohibiting disclosure of information;
(iii) Categories of exempt information
- Note 7 Common Law and the Duty of Confidence (excerpt from *Privacy and data-sharing: The way forward for public services; Annex A: the legal framework*², published by the Prime Minister's Strategy Unit)

Links to other sites*

Department for Constitutional Affairs (formerly the Lord Chancellor's Dept)
Freedom of Information web page: <http://www.lcd.gov.uk/foi/foidpunit.htm>

Office of the Information Commissioner: <http://www.dataprotection.gov.uk/>

Campaign for Freedom of Information: <http://www.cfoi.org.uk/>

Centre for Corporate Accountability: <http://www.corporateaccountability.org/index.htm>

² **Annex A – the legal framework** also contains sections on *Human rights and the right to respect for private life; Data protection; and Limits on data-sharing imposed by administrative law* which may be of interest. The Annexes are not available to view online but can be downloaded as a single document from <http://www.number-10.gov.uk/su/privacy/downloads/piu-data-annex.pdf>

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National Consumer Council <http://www.ncc.org.uk/pubs/commercial.htm> (link to publication: *Commercial confidentiality – a new definition for the Freedom of Information Act*)

* HSC/E is not responsible for the content of external websites