



**AN BILLE UM SHAORÁIL FAISNÉISE (LEASÚ) (UIMH. 2)
2003
FREEDOM OF INFORMATION (AMENDMENT) (NO. 2)
BILL 2003**

EXPLANATORY MEMORANDUM

Background.

The purpose of the Bill is to deal with the apparent urgency surrounding the expiry of the 5 year deadline for release of cabinet papers on 21st April, 2003 while at the same time providing for a detailed public consultation process to allow proper scrutiny of the Freedom of Information Act 1997 and proposals for its amendment.

The Freedom of Information Act is now a basic cornerstone of our democratic process and it is imperative that significant provisions are not diluted or dismantled without any proper public consultation process.

The Bill enables the Government's immediate requirements to be met while accommodating the imperative need for proper scrutiny and consultation before any radical change to the Act.

Provisions of Act.

Section 1 amends section 19 of the Act. The Act was passed on 21 April, 1997 and came into operation on 21 April, 1998.

There is what amounts to a blanket exemption for memoranda for the Government and its members (section 19(1)). However 5 years from the commencement of the Act (section 19(3)(b)) it will not apply to records which are more than 5 years old.

On the expiry of the 5 year period, however, cabinet papers do not necessarily have to be disclosed because the other exemptions continue to apply, such as that the record relates to the deliberative process (s. 20), would prejudice the functions and negotiations of public bodies (s. 21), relates to parliamentary, court or certain other matters (s. 22), relates to law enforcement or public safety (s. 23), relates to security, defence or international matters including Northern Ireland (s. 24), contains information received in confidence (s. 26), contains commercially sensitive information (s. 27), contains personal information (s. 28), contains information relating to research or natural resources (s. 30), affects the financial and economic interests of the State or public bodies (s. 31) or would be prohibited by law specified in the Act (s.32) or records coming within the exempted categories, such as records held by the Attorney General (s. 46).

Nonetheless the Government have indicated concerns as to the expiry of the 5 year period. Under *section 1* of the Bill, an additional 12 month period will be allowed until 21 April, 2004, during which the exemption will continue to apply. The purpose of this extension is to resolve the Government's immediate difficulty while allowing adequate time for a thorough public consultation process in relation to any long term or other changes to the Freedom of Information Act.

Section 2 provides for a consultation process to follow immediately upon the passing of the Act. The Information Commissioner will consult with any interested parties and examine all proposals for amendment of the Act, not just the Government's proposals (which aim to restrict the Act). His report will therefore examine a more balanced spectrum of opinion than that of the "High Level Group" of civil servants who originated the current flawed proposals. The Commissioner will report to both Houses of the Oireachtas and his report will be examined by the Joint Committee on Finance and Public Service. The Minister must consider the reports on foot of the public consultation process before bringing forward proposed amendments to the Act. The review will be carried out during the 12 month period provided by *section 1*.

Sections 3 and 4 are standard provisions.

*An Seanadóir Breandán Ó Riain,
Máirta, 2003.*