



Scottish Association of Law Centres

Proposed Freedom of Information Reform (Scotland) Bill: Our response

About us

The **Scottish Association of Law Centres** (SALC) is the national body for the not-for-profit legal sector in Scotland, the community legal sector, and in particular community-based law centres across Scotland. We are an independent association, established to support the not-for-profit law sector to ensure the provision of free and accessible legal and related services to people, and communities including people experiencing discrimination and disadvantage.

Introduction

We submit a response to the Scottish Government consultation on access to information rights in Scotland. This consultation follows the work of the Public Audit and Post-legislative Scrutiny Committee (PAPLS), to undertake post-legislative scrutiny of the Freedom of Information (Scotland) Act 2002 (FOISA).

Our response

5. Which of the following best expresses your view of the proposed Bill?

SALC welcomes the opportunity to respond to this consultation and we agree with its aim of strengthening people's access to information rights.

However, we are only partially supportive of the proposed changes as we are concerned they might be detrimental to third sector organisations delivering services of public nature and/or receiving public funding. We recognise the critical importance of freedom of information (Fol) as a tool to strengthen transparency and accountability, and a means of enforcing information rights for individuals and communities. Nonetheless, we also recognise the need to take a proportionate and tailored approach to any changes to Fol legislation, which reflects the challenges the charitable sector faces.

The changes proposed in the consultation could have considerable financial implications for organisations, especially for smaller ones, which might have to allocate funding to training and support, or recruitment of Fol officers. Without substantial, long-term, and adequate funding, many organisations might have no choice but to reallocate resources from service delivery to training and support,

reducing the reach and impact of their services and harming the communities that rely on those services. Under the current funding models, it could be very challenging for organisations to bear the costs associated with the proposed changes.

We are also concerned that any extension that designates voluntary organisations under FoI might be used to undermine the work carried out by those organisations, if there is a risk that vexatious requests could overwhelm their limited capacity to respond. We are aware that there are protections in place to identify and respond to vexatious requests; nonetheless, we understand that at present, organisations receiving a FoI request would bear the burden of proving the request was vexatious. We are concerned that the proposed changes might not offer enough protection from harm and might not prevent the system from being abused, especially targeting organisations that work with some of the most marginalised and vulnerable groups.

7. Which of the following best expresses your view on the third/charitable/voluntary sector being designated under FoISA if it is publicly funded and the service is of a public nature?

We welcome the principle behind this proposal aimed at strengthening people's access to information rights. However, we think that a blanket proposal to designate the third sector under FoISA might not be the best solution. Particularly, we are concerned that the definitions used in the consultation around organisations that are publicly funded and that provide services of a public nature do not offer enough clarity to understand the parameters of what kind of funding the proposal would cover.

We also want to highlight other tools that could be used to strengthen people's access to information rights. For example, the Scottish Government's powers under Section 5 could be reviewed, with a view to using them more frequently and consistently.

9. Which of the following best expresses your view on creating a statutory duty to publish information?

Whilst we welcome the transparency that would come with wider availability of key information in the public domain, we are concerned that a statutory duty to publish might have a detrimental impact on third-sector organisations, if the requirements are costly to comply with and organisations have limited resources, skills, and capacity to fulfil their obligations.

13. Any new law can have a financial impact which would affect individuals businesses, the public sector, or others. Do you think any cost is outweighed by the public interest benefit?

As set out above, we are concerned that the financial implications of the proposed changes might be hard to manage for some third-sector organisations, which can already work with very limited resources and staffing, and this might have a detrimental impact on the services they deliver and the communities they serve.

14. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?

As set out above, we are concerned that if a decision is taken to extend FoISA to third-sector organisations, work is done to ensure that a proportionate and tailored approach is taken, which reflects the particular challenges the charitable sector faces and the role it plays in delivering public services, in partnership with the statutory and private sectors.

Many third-sector organisations provide vital services to some of the most marginalised and vulnerable groups in our society, and we reiterate the need to ensure that the FoISA process is not used in a vexatious manner to target organisations that offer services in areas such as gender-based violence, trans and LGBTQ+ rights and immigration and asylum work, in an attempt to drain resources, obstruct service delivery or silence those organisations.

For further information, please contact the Scottish Association of Law Centres.

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