FINANCE COMMITTEE

FREEDOM OF INFORMATION (AMENDMENT) (SCOTLAND) BILL

SUBMISSION FROM THE ARCHIVES AND RECORDS ASSOCIATION

1. Thank you for your email of 14 June, inviting the Archives and Records Association to contribute to the Finance Committee’s scrutiny of the Freedom of Information (Amendment) (Scotland) Bill.

2. The Association is the principal professional body for archivists, archive conservators and records managers in the United Kingdom and Ireland. Records managers and archivists have a significant role in delivering transparency and accountability in Scottish public authorities. The s 61 Code of Practice issued under the Freedom of Information (Scotland) Act 2002 recognises the role that records management plays in underpinning a successful implementation of freedom of information legislation. Many public sector records managers either serve as their organisation’s freedom of information officers or work alongside them. Records managers and archivists work together to ensure that the documentation of critical decisions and key moments in their organisation’s history are documented and preserved for the present and the future.

3. Your email raised several questions. I address each of them below.

   What is your general view on the purpose of the Bill and broadly, are you supportive of it?

4. The Association is highly supportive of the objectives of freedom of information legislation, and considers that the proposed legislation is an appropriate next step.

   Did you take part in the Scottish Government’s consultation on the Bill and how have your views been reflected?

5. The Association responded both to the 2011 consultation on the Bill and the 2009 Improving Openness consultation which preceded it. We welcome the way our concerns about the potential impact of an inflexible approach to the duration of exemptions have been addressed in this draft bill by giving the power to set different durations for different exemptions. The Association also had concerns about the resource implications for public archives, if the historical “closure period” of a large number of records were reduced at the same time. We note that the policy memorandum accompanying this Bill commits to examine in further consultations the resource implications of changes in the duration of exemptions.

   The Scottish Government believes the Bill will add strength and clarity to the Freedom of Information (Scotland) Act 2002. Do you agree? Does the Bill protect the rights to access information?

6. The Bill will support the development of a framework and culture of openness in Scotland, by permitting a sensitive and value-based approach to releasing records, rather than applying rigid closure periods across a whole
range of exemptions. In this way it will strengthen the Freedom of Information (Scotland) Act 2002.

7. The proposals to extend the period for bringing forward the prosecution of an offence under s65 of the 2002 Act will also strengthen that Act, by making this provision enforceable. Enforcement of this criminal offence will protect rights to access information, by ensuring that those who obstruct this right are prosecuted.

Royal exemption
8. The Archives and Records Association has no views on this exemption.

Historical periods
9. The Association supports the flexible approach to historical records set out in the Bill. In response to previous consultations, the Association welcomed the increased transparency involved in reducing the lifespan of all except one of the exemptions specified in the consultation. The measures contained in this Bill will give the Scottish Government the ability to implement this.

10. The Association recommends that the lifespan of the s36 exemption relating to confidentiality should not be reduced. Examples of records where it would be inappropriate to reduce the duration of the confidentiality exemption include social work, children’s homes and adoption records. Reducing the duration of the confidentiality exemption could also prevent Scottish public archives from receiving records as a gift from private individuals or organisations. These records make a significant contribution to research in Scotland and to Scottish history. If donor wishes regarding confidentiality periods cannot be respected, the donors may instead destroy their records or deposit them overseas. Records that could make a significant contribution to Scottish research and Scottish history will be lost.

11. Information should be open unless there is a strong, demonstrable reason for it remaining closed (as is the case for some confidential records). The amendments proposed in this Bill will make this possible by allowing a flexible approach to the duration of exemptions for historical records.

Financial aspects
12. The changes proposed by this Bill have no financial implications in themselves. It is when the powers set out in s 4 of the Bill are used to reduce the duration of exemptions that financial implications may arise for public archives.

13. If the term of closure ‘historical records’ is reduced, historically significant records may need to be transferred to public archives sooner than is currently the case. This has implications for storage space, cataloguing and retrieval arrangements. Careful consideration should be given to the way such measures are introduced, as Scottish public archives would find it difficult to cope with a significant increase in workload and volume of records in a short time scale.
14. The flexible approach set out in the Bill offers the opportunity to manage this impact by targeting specific records in specific time frames. In the accompanying policy memorandum, the Scottish Government has committed that the reduction in the duration of exemptions will be subject to appropriate consultation, including an assessment of resource implications. The ARA supports this approach, in the expectation that future consultations will include consideration of the resource implications for public archives.

15. Thank you for this opportunity to contribute to the scrutiny of the Freedom of Information (Amendment) (Scotland) Bill. ARA’s membership has specialist expertise in the practical implementation of freedom of information legislation, and also on records management, and the organisation of information to facilitate public access to it. Freedom of information legislation is a key professional concern for the Association and its members. Please do not hesitate to ask if we can provide further assistance to this exercise.