

FREEDOM OF INFORMATION REFORM (SCOTLAND) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Freedom of Information Reform (Scotland) Bill, introduced in the Scottish Parliament on 2 June 2025.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 72–FM);
 - a Policy Memorandum (SP Bill 72–PM);
 - a Delegated Powers Memorandum (SP Bill 72–DPM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 72–LC).
3. This Financial Memorandum has been prepared by the office of Katy Clark MSP ("the Member").
4. The Bill will improve transparency, accountability and scrutiny in Scotland by amending the Freedom of Information (Scotland) Act 2002 ("FOI Act"). The Bill sets out two further powers to designate Scottish public authorities under the 2002 Act, closes a loophole on the definition of a publicly-owned company, introduces a new "Publication Code", establishes a requirement for a freedom of information officer to be designated within Scottish public authorities, requires the independent Scottish Information Commissioner (Commissioner) to make provision for a code of practice regarding compliance with the duty of proactive publication and strengthens the enforcement powers of the Commissioner.
5. The cost of administering the FOI Act always depends on the efficiency of the response procedures and to the time dedicated to FOI compliance. Public authorities have established different arrangements to receive FOI requests because there is no specific format, route or template. This Bill will lead to savings for bodies who are currently designated by greater use of proactive publication with streamlined processes. For bodies newly designated as a result of this Bill, there will be costs. The Bill allows a Committee of the Scottish Parliament to carry out a full consultation into a potential new designation, take evidence and report to the Parliament. Where the Committee makes a recommendation that a new designation should be made, the Parliament

may vote to designate a Scottish public authority under the 2002 Act. This will improve the scrutiny and transparency of the designation process.

6. The Member intends that the Bill will deliver cultural change. For example, the provision to designate an FOI Officer in each public authority subject to the FoI Act is not intended to prompt the employment of more staff but to achieve a cultural and corporate focus on compliance and making FoI a business-as-usual function in tandem with good governance. This proposal is made as a result of representations by some FOI practitioners who speak of the difficulties of delivering FOI within their organisations. Many also deal with data protection and point to that as a better model. The policy intention of this Bill is not to add costs to any currently designated body however it is accepted that any change can lead to resource implications to amend or provide training for staff and facilitate necessary discussions about the impact for the organisation. It is not expected that there will be many prosecutions or appeals taken as a result of this Bill, given that previous similar provisions have led to few cases, but where there are, there will be additional costs which would be met within existing budgets, given they are rare.

BACKGROUND

Cost of initial Act

7. To understand the cost which might fall upon the Scottish Administration, local authorities, and other bodies, individuals and businesses, it is important to understand how compliance with the FoI Act has been managed since 2002. This is of assistance in understanding the costs of newly designated bodies under the Bill. No new body designated will incur costs greater than the bodies currently designated given the public facing nature of bodies currently designated such as the NHS and local authorities. Increased privatisation of services would impact on this, and so costs are calculated on the basis of how services are currently delivered. The Scottish Executive's Financial Memorandum¹ accompanying the Freedom of Information (Scotland) Bill in 2001, required designated bodies to "absorb within planned resources" the costs of implementing the Bill. Therefore, the centrality of delivering openness and accountability was understood to be part of business as usual for public bodies regardless of the costs involved. This approach has been applied to all new designations made under a s5 order of the FoI Act, for example Registered Social Landlords (RSLs) in 2019. It is accepted that there have been costs and savings which have occurred as a result of designation.

8. In 2001 it was estimated the cost to public funds of implementing the proposals in the Bill "might fall within the range of £2.5 million to £4.8 million per year"².

9. It was acknowledged "that many Scottish public authorities already handle, within existing resources, large volumes of requests for information – and make a great amount of information available to the public proactively as well as in response to requests – whether or not under a formal regime. Many public authorities will therefore have existing structures in place to support the provision of information under the Bill". The Scottish Administration should not incur any cost except minimal administration costs as has been set out in the FM and because of the

¹ [Financial Memorandum - Freedom of Information \(Scotland\) Bill](#) Para. 208

² £4.5 million and £8.6 million in real terms, 2024-25 prices calculations made using HMT GDP deflator as at 1st May 2025.

significant and sustained investment in its FoI function. The various new offences should not incur costs beyond £120,000 costs which will be detailed in this Memorandum. The Scottish Administration may incur costs in relation to publicly-owned companies, who will be designated by section 3. It is anticipated that a third to one half of £15,000 allocated may be borne by those organisations but there should also be savings to the Scottish Government who will no longer have to administrate those applications directly.

10. In terms of local authorities if there is a cost attached to proactive publication, this is due to the FOI Act not currently being followed. The duty to proactively publish is a reframing of current legislation to ensure that obligations under FOI and intended to improve consistency and compliance. Therefore, it should not have a cost attached. Local authorities should not require to put additional resource into the creation of a statutory FOI Officer and should make savings from the s3 designations as they should no longer require to administer those organisations FOI applications for them.

11. The majority of costs of the new designations by the Scottish Parliament will be on private sector companies and the third sector organisations will be minimal for these private businesses given current legislative duties, such as a requirement to disclose through the EIRs, and contractual obligations because they hold information which is required by the contracting authority to disclose under the FOI Act. This will be scrutinised by the designation process.

12. In terms of the costs of the new procedures for the Scottish Parliament those should be met within existing budgets and the same applies to existing budgets allocated to the FOI Commissioner. This has been detailed in the Financial Memorandum as part of the business as usual costs which calculate contingency each year to address appeals and issuing, for example, of Enforcement Notices.

13. It is envisaged that new designations will be made by the Scottish Parliament sector by sector over at least a 5 year period. The process needs to led with the full involvement of the Information Commissioner who has to ensure he has the capacity and resource in place to deal with new designations. The number of bodies affected is dependent on the profile of the sector but it is not envisaged that more than 1000 bodies should be added at any one time.

14. In *An Open Scotland: Freedom of Information, A Consultation*, the then Scottish Executive's FOI consultation document published in November 1999, an early estimate of the cost to Scottish public authorities arising from freedom of information was given as between £9 million and £12.5 million per annum.³ A 2010 study favourably compared the costs of FoI in Scotland with five other countries:

Table 1- Comparative Costs of FOI Application

Country	Year	Cost in £s of individual FOI requests	Value in real terms, 2024-25
UK	2005	293	£475

³ Referenced at paragraph 211 of aforementioned financial memorandum. £16.6 million and £23.5 million in real terms, 2024-25 prices calculations made using HMT GDP deflator as at 1st May 2025.

Scotland	2009	189	£278
Ireland	2009	364	£534
Canada	2000-2001	637	£1163
Australia	2008-2009	748	£1113
US	2009	248	£364

15. When looking at other jurisdictions with similar FOI legislation, it is apparent that costs are comparatively higher. In Jersey, the cost of implementing FOI legislation was estimated to be £2.8 million in 2012-2015 and noted that it is not possible to quantify individual costs due to the administrative fees incurred by FOI requests.⁴ In Victoria, Australia, between the years 2018-2019, the average cost of responding to a FOI request to agencies was \$566.12, and the average cost to applicants per FOI request was \$44.74.⁵ (Currently one Australian dollar equals £0.487.)

16. A proven problem with trying to estimate costs for individual public authorities is that the methodology and factors that determine cost vary considerably: they have very different levels of FOI requests; the complexity of those FOI requests varies considerably within and across financial years; the efficiency of their records management systems may make sourcing the requested information easy or very difficult which results in significant staff costs; the approach to answering the FOI request for example, if it is a bureaucratic process, it will cost a lot more. Also, if there is an organisational presumption against disclosure, additional staff time is required to identify an exemption to justify refusing to disclose the information.

17. More recently Ben Worthy acknowledged that cost calculations of FOI requests are often low, with estimates around £20 per FOI request although in 2024 Liverpool City council calculated the cost as being £143.75. However, he questioned whether a bigger financial issue is the lack of staffing and resources caused by austerity.⁶

General Implementation

18. Compliance with the FOI Act by designated bodies is, by its nature, demand led. The Scottish Government consistently receives the most and has recorded an annual rise in FOIs. For example, from 16th January 2024 to 16th January 2025, the number of FOI requests for information received by the Scottish Government was 5,831⁷ compared to 3,049 in the 2019 calendar year⁸. In other sectors there is wide variation such as, from April 2024 to March 2025, NHS Greater Glasgow and Clyde received 1,376, NHS Orkney 817, the State Hospitals Board for Scotland 310 and the Scottish Dental Practice Board received none.⁹

⁴ <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=267>

⁵ <https://ovic.vic.gov.au/about-us/documents-and-publications-we-produce/research-and-reports/state-of-freedom-of-information-in-victoria/costs/>

⁶ Ben Worthy The House | Freedom of Information: populist irritation or popular democratic tool? Pub by Politics Home at <https://www.politicshome.com/thehouse/article/freedom-information-populist-irritation-popular-democratic-tool>

⁷ <https://www.gov.scot/publications/foi-202500448221/>

⁸ <https://www.gov.scot/publications/freedom-information-scotland-act-2002-information-request-handling-annual-report-2019/>

⁹ <https://www.foi.scot/statistics>

19. In 2024, the Member's office sent FOI requests to a range of public bodies such as councils, RSLs, colleges and health boards to obtain accurate costs of processing FOI requests. Of the 12 public authorities which provided a response, 10 relied on section 17 of the FoI Act, that information is not held, including Police Scotland, Glasgow City Council, Wheatley Homes, Ayrshire College and Addiewell Prison Ltd. Blochairn Housing Association was the only one to provide an estimate of costs: £1279 (2023-24), £727 (May 2023), £68 (September 2023) and £484 (March 2024). Although this is a small sample, it does indicate that the cost information is not routinely collected by organisations.

20. The Public Audit and Post Legislative Scrutiny Committee (PAPLS) Inquiry Report on the FOI Act, of May 2020, concluded that there needs to be a fundamental shift in the way in which FOI is viewed in many public bodies. "In essence, public sector bodies need to view FOI as an essential element of public service provision and ensure that it is resourced accordingly."¹⁰ Therefore, it is expected that FOI is increasingly being treated as part of business as usual.

21. Whether it is a simple spreadsheet to log and manage FOI request or a bespoke service, over the last 23 years, technology has simplified the process and reduced costs.

22. Initial investment achieves longer term savings. For example, the eCase service focuses on supporting organisations to deliver operational change using technology at the cost of:

Table 2- Average Costs of FOI with Technology

Type of Public Authority	Annual Purchase Cost	Average Cost per FOI Request
Small (up to 2,000 FOI's a year)	£17,719	£8.86
Medium (up to 3,500 FOI's year)	£31,008	£8.86
Large (up to 5,000 FOI's a year)	£42,082	£8.42

23. The performance benefits are significant as eCase reports that it saves customers 52 minutes per case on average. The service facilitates logging, processing and responding to all correspondence, improving performance and consistency. Fivium, suppliers of the eCase service, have consistently reported a 31.8% reduction in the time spent managing each FOI request and an increase in FOI requests due to increased awareness of FOI legislation.¹¹

24. The law already protects designated bodies from excessive costs in complying with an FOI request. The statutory limit for responding to an FOI request under the FOI Act and The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, is set at £600, with a maximum staff hourly rate of £15p/h.¹² Any FOI requests which cost more than £600¹³ to respond to can be refused.

¹⁰ Para 166 at <https://bprcdn.parliament.scot/published/PAPLS/2020/5/19/Post-legislative-scrutiny--Freedom-of-Information--Scotland--Act-2002/PAPLS052020R2.pdf>

¹¹ <https://www.ecase.co.uk/ecase-customers-save-52-minutes-per-case-on-average/#:~:text=We%20work%20with%20our%20customers,saving%2052%20minutes%20per%20case.>

¹² £25 in real terms, 2024-25 prices calculations made using HMT GDP deflator as at 1st May 2025

¹³ £1,000 in real terms, 2024-25 prices calculations made using HMT GDP deflator as at 1st May 2025

Methodology

25. The Scottish Government undertook an FOI Costing Exercise in 2009-2010. It estimated the average cost per FOI request in Scotland in the year 2009 was £189¹⁴, the lowest out of all of the countries assessed (excluding FOI Unit staff costs). The average cost of responding to a FOI request, including FOI Unit staff costs was £236¹⁵. The average time taken to complete an FOI request was 7 hours 22 minutes. The annual cost of registered cases and annual costs of the FOI Unit in 2009 came to a combined cost of £409,465.¹⁶ Given all the above, and the wide divergence of costs which have been reported, £200 is a reasonable figure accepting that for many organisations the cost will be significantly less and that the Scottish Government's figures may be higher on current day prices unless they have found ways to reduce costs with new technology.

26. The intention of this Bill is however to reduce costs for bodies who are currently designated by the strengthening of proactive publication therefore avoiding the new for many FOI applications. An average cost of £200 per FOI application will be used. Given the Liverpool City Council figures and the evidence that new technology has reduced costs and is likely to be used by larger organisations which are newly designated this is a reasonable figure. The cost to a small organization is likely to be significantly less as shown by the few FOI applications being received by recently designated housing associations.

27. Most new bodies which are likely to be designated under this Bill are likely to receive no or less than 10 FOI applications each year. The bodies which would receive the most are large multinationals who have been awarded multiple large government contracts who would receive between 10 or up to 500 FOI applications each year, although this may be dependent on the quality of the service they provide. So, for very large bodies such as Mitie, G4S or Securicor who at times have multiple contracts for example cleaning and security and cleaning contracts, the cost could be between £2,000 and £50,000 per year. For a small third sector organisation FOI requests will be more unusual with many receiving no FOI requests most years and up to 10, so the cost would be between nil and £2000 but it must be remembered that FOI requests can only relate to publicly funded services. Such smaller organisations are unlikely to employ new staff so the cost will be staff time.

28. Any new designated authority under the new method allowed by this Bill would only happen after a full consultation with a Committee of the Parliament taking evidence and a report which would consider costs resources and capacity for every proposed new designation. This is primarily a pathway Bill which will lead to no new designations, apart from addressing the omission in defining publicly owned companies and enables them to happen when the Parliament so wishes. A proper scrutiny of costs at current day process should be part of that process.

Experiences of those already designated

29. The Business and Regulatory Impact Assessment contained in the 2015 consultation paper¹⁷ anticipated generally low numbers of FOI requests for bodies proposed for designation

¹⁴ £278 in real terms, 2024-25 prices calculations made using HMT GDP deflator as at 1st May 2025

¹⁵ £347 in real terms, 2024-25 prices calculations made using HMT GDP deflator as at 1st May 2025

¹⁶ [cost-of-foi.pdf](#) £601,157 in real terms, 2024-25 prices calculations made using HMT GDP deflator as at 1st May 2025

¹⁷ https://consult.gov.scot/freedom-of-information/foi-consultation/user_uploads/foi.pdf

and subsequent feedback shows these estimates were broadly accurate as in single figures (if any). The low number of FOI requests is reflected in the statistical data compiled by the Commissioner's office and available via its database.

30. In calculating the costs of designation under the FOI Act, caution is required in generalising about the impact across and within sectors. For example, 'Registered Social Landlords and FOI: One Year On', published in March 2021 by the Commissioner confirmed that RSLs have not been overwhelmed by the FOI Act since being designated in 2019, and that has continued. From April 2024 to March 2025, RSLs received 927 FOI requests in total ranging from Sanctuary Scotland Ltd which received 27, Hebridean Housing Partnership 10, Wheatley Housing Group 9 and Ferguslie Park received 2.¹⁸

Post Legislative Scrutiny

31. The post legislative scrutiny of the FOI Act was undertaken from 2019-2020 by the PAPLS Committee of the Scottish Parliament. In evidence, public authority respondents raised the issue of the resources required to respond to FOI requests for information, something that was seen as particularly challenging in the context of budget constraints and increased demand for public services.

32. Both the Commissioner and the Scottish Government emphasised that the resource issues could be addressed by better and more efficient ways of working. The Committee considered that a significant shift towards proactive publication needs to take place, and notes that in the longer term, such an approach is likely to reduce the number of FOI requests for information to which authorities are required to respond and, in so doing, reduce the pressure on their resources of responding to such FOI requests.¹⁹

Financial Cost and Organisational Benefits

33. There is uncertainty about costings, savings and financial benefits of the Bill in the short, medium and longer term given the diversity in bodies potentially to be designated and in their budgets and staffing levels. The Member listened carefully to concerns relating to costs and capacity during the consultation. The Bill provides a pathway to designation to manage costs and ensure there is capacity to manage change for those already designated and for future designated authorities to process FOI requests.

34. There is a benefit gained by the public authority if the public trust and support their public services. Greater transparency regarding the use of public money is likely to lead to savings.

35. The cost to reputation and levels of public trust by doing nothing should be considered. For example, polling by the Commissioner in 2024 confirmed that "83% felt that FOI helps to prevent bad practice in public bodies" and so the enforceable right to access information provides routine assurance to the public.²⁰

¹⁸ https://consult.gov.scot/freedom-of-information/foi-consultation/user_uploads/foi.pdf

¹⁹ Para 27 <https://bprecdn.parliament.scot/published/PAPLS/2020/5/19/Post-legislative-scrutiny--Freedom-of-Information--Scotland--Act-2002/PAPLS052020R2.pdf>

²⁰ <https://www.foi.scot/public-awareness-of-foi>

36. Only 6% of respondents to the independent poll conducted for the Commissioner in 2024 agreed with the statement that FOI was a waste of public money. This figure was the lowest since the questions was first asked in 2011. It shows that, despite the financial challenges that public authorities face, people see increasing value in their right to examine public sector decision-making and scrutinise the performance of public services.

SUMMARY OF ESTIMATED COSTS ASSOCIATED WITH THE BILL

37. The provisions of the Bill incur costs and analysis is provided of what would fall upon—

- (a) the Scottish Administration;
- (b) local authorities; and
- (c) other bodies, individuals and businesses.

Section 1

38. Section 1 introduces a duty on Scottish public authorities to apply a presumption in favour of disclosing information in response to an information request unless disclosure is prohibited by an absolute exemption.

Cost

39. The level of resource that bodies currently designated invest in FOI training varies considerably. In addition to the free training and resources provided by the Commissioner, it is understood that some public authorities may purchase additional training and resources, for those that opt to do so. It is envisaged that the cost to a medium to large organisation to update training on FoI as a result of the Bill will be less than £1,000 where it was felt to be required. This is equivalent to costs associated with the recent designation process.

40. The processing and administration costs of receiving and responding to FOI requests are staff salary, NIC, and pension, which will be greater for larger organisations. The Scottish Administration, local authorities and other bodies currently have provision in place for dealing with FOI requests. Therefore no additional cost is attached to the performance of an existing function, updated as described above. Many will benefit from the free guidance and training which is expected to be issued by the Commissioner. The overall cost to most organisations is nil as it is about cultural change and a more effective delivery of existing law with clear guidance of what is required from the Commissioner.

Timescale

41. This provision will enter into force on Royal Assent.

Section 2

42. Section 2 sets a new requirement for Scottish Ministers to consider any proposal made by the Commissioner when deciding whether to use their existing powers under sections 4 and 5 of the FOI Act to specify a person as a Scottish public authority for designation; confers a new power

on the Scottish Parliament to add to the list of Scottish public authorities in schedule 1 of the FOI Act.

43. Section 2 of the Bill seeks to address the backlog of designations due to the infrequent use of the section 5 power and so represents a delayed expenditure.

Costs

44. No new designations will be created as a result of this provision, which creates a new mechanism for designations to be initiated and considered in the future.

45. Currently the public sector is taking responsibility for answering FOI requests on public services contracted out to the private and third sector providers. Fulfillment of duties under the FoI Act necessitates the public sector to have systems in place to require contractors to provide information so a response can be issued to the requestor within 20 working days. Direct designation simplifies the process, and contractors can build on the information retrieval and processing systems already in place for contract compliance. This will provide savings to organisations such as local authorities.

46. The new power on the Scottish Parliament to add to the list of Scottish public authorities in schedule 1 of the FOI Act will be factored into the work program of the lead committee. The Scottish Parliament committees routinely undertake public consultation on Bills and inquiries, hear oral evidence and produce reports and a similar approach is required for the exercise of this new power. The work programme is agreed in advance and funded from existing financial allocation from the Scottish Parliament. Therefore, an additional cost is not anticipated. The cost of any new designation itself is considered elsewhere in this Memorandum and would be a matter for the Committee considering a new designation and for the Parliament when considering a recommendation in a committee report.

Timescale

47. Scottish Ministers are next due to report to Parliament on or before 31st October 2025. The Bill does not change the requirement to produce a bi-annual report but does include new factors in the decision-making process.

Scottish Parliament Designations

48. There is a wide range of organisations who deliver public services in Scotland not covered by FOI. Many of them are providing services fully funded by the taxpayer. Others are organisations with public and private sector contracts. Often in larger organisations, there are very clearly separate structures between public and private sector contracts. When the FOI Act was passed, it was envisaged that many public services carried out would be covered. However, as the landscape of public services has changed, many of these organisations which provide core services to the public, funded by taxpayers, are not covered by the FOI Act. Consequently they do not have to pro-actively publish information or answer information request within 20 working days. These include multinationals, third sector organisations, charities and a wide range of other organisations. Significant amounts of public money are spent to provide services in this way. It is not possible to do a detailed costing of every potential be designation which would be added by

the Scottish Parliament. Such detailed work would be required for each decision with current costs. However given knowledge of the range and profile of the organisations who potentially could be designated, a range of £500,000 to £2 million for total annual cost for those bodies is reasonable. It is a recognition of this by the Member and the discussion on capacity and resource during the Consultation which has led to the provisions of section 2 being drafted to maximise consultation, evidence taking, transparency and scrutiny in a future process.

Section 3

49. Section 3 amends section 6 of the FoI Act to extend the definition of a publicly-owned company and close a legal loophole. The organisations concerned are all expected to be small and at this time, given they are delivering public services directly or under contract, an existing designated body is currently administering those FOI requests.

Scope/Impact

50. The extension of the definition of a publicly-owned company will result in additional companies being designated and investment in the infrastructure to directly respond to FOI queries. The volume of companies is not known, however the Campaign for Freedom of Information in Scotland (CFoIS) has produced a briefing in 2020 “Names of Publicly Owned Companies Remain Confidential” which revealed a gap in the list of companies held by the Scottish Government and the names of companies which have a publication scheme as required by Section 23 (1)(a) of the FoI Act. Therefore, an estimate of up to 99 companies may be captured by the new definition of a public owned company.

Costs

51. Many of these organisations are small and any work required because of this Bill would be incorporated into an existing post with few FOI applications and cost implications. For larger organisations it may be necessary to expand a role or create a new post. For the largest organisations an FOI /Information Governance officer role is generally advertised in the £30-£40k range. Desktop research has identified that £38k a year is the average pay of an Information Governance officer.²¹ A large local authority is currently recruiting Data Protection staff, with a subject access officer on a scale of £34,922 to £40,664.²² Therefore there is flexibility depending on the company recruiting. However, it should be noted that there will be savings to the existing designated body. Publicly owned companies will already have a degree of knowledge of the FOI legislation from liaising with public bodies regarding FOI requests made to the public authority for information in which the body has an interest.

52. The publicly owned company may already be within scope of the EIRs if the body has functions relating to the environment and is under the control of a Scottish public authority.²³ Information governance and processing systems and staff will already be in place to comply with

²¹ https://www.glassdoor.co.uk/Salaries/scotland-information-governance-officer-salary-SRCH_IL.0.8_IS7289_KO9.39.htm?countryRedirect=true.

²² <https://myjobscotland.gov.uk/councils/glasgow/glasgow-city-health-and-social-care-partnership/jobs/subject-access-officer-business-development-421519> Accessed 1st May 2025

²³ See Guide to the EIRS – Which Bodies Are Covered by the EIRs? at <https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsBodiesCovered.pdf>

these contractual and legal duties, which may also be integrated with the data protection function. For example Scotrail Trains, a high-profile, public-facing, national service since April 2022, reported receiving 360 FOI requests over the last four quarters 97% of which were responded to on time. However HITRANS, the Highlands and Islands Transport Partnership had none. In 2021, the Scottish Information Commissioner ruled the then privatised service, Scotrail Abellio Ltd., was subject to the Environmental Information Scotland Regulations.²⁴

53. FOI request numbers to publicly owned companies are anticipated to be low given current experiences under the EIRs.²⁵ Therefore it is not anticipated that publicly owned companies will receive high volumes of FOI requests to negatively impact on their commercial activities.

54. The cost elements of designation are to engage in training, develop appropriate procedures, create template resources, train staff and have support from senior management. A considerable body of guidance is now available to prepare for designation which is freely available from the Commissioner. Good records management is key to effective FOI request handling and should not be a new requirement for the bodies. The timeline agreed for future designation will allow significant preparation time.

55. The cost of supporting the new designation depends on the size and nature of any designation, but the Commissioner's office broadly estimates that dealing with regular and ongoing designation would require 0.75 of one Grade 4 officer in enforcement, amounting to £48,488 per annum and 0.5 of one Grade 4 officer working on training, support and guidance for new designees, which is estimated at £32,325 per annum, alongside one full time administration officer to provide support in both areas, which we estimate at £50,745 per annum, excluding capital costs. See Table 5 below.

56. In 2019, in respect of the designation of RSLs and their subsidiaries delivering public functions, the Scottish Government admitted that "the costs and administrative impact of designation are difficult to quantify."²⁶ However average cost figures would vary significantly depending on the organisation and the type of FOI requests it received.²⁷ None of these 99 bodies are likely to receive as many FOI applications as Scotrail so the cost of applications will range from nil to considerably less than £72,000. Most would receive up to 10 with a maximum annual cost of £2,000 with work incorporated into an existing role. These figures are based on an average of £200 per FOI application. Given the nature of the 99 organisations that may be covered, and that they are not of a high-profile nature, they will receive far fewer applications. It should also be noted that the public already have the right to information about these bodies via other organisations and therefore, in theory there should be no cost and indeed, overall savings. However, a transitional cost of £15,000 is allocated.

²⁴ Decision 044/2021: Is Abellio ScotRail Ltd subject to the EIRs? <https://www.foi.scot/decision-0442021>

²⁵ View the dashboard on freedom of information (FOI) and environmental information (EIRs) requests at <https://www.foi.scot/statistics>

²⁶ Equivalent to £327.10 in 2025 <https://spice-spotlight.scot/real-terms-calculator/>

²⁷ Para 4.9, Note 29

Savings

57. There will be a reduction in information requests to the Scottish Administration, local authorities and other bodies as they no longer must seek the information from the publicly owned company. There may be a small reduction in the number of FOI requests, for example to Regulators and local authorities, about the delivery of functions, leading to some small costs savings.

Timescale

58. This provision will become effective on Royal Assent so the costs to the Commissioner's office will be immediate as it determines which publicly owned companies are set for designation as well as assisting with the transition to compliance to the FOI Act and building internal capacity as far as resources allow. Additional costs of compliance to the designated publicly owned companies will be immediate as will be the savings to public authorities.

Section 4

59. Section 4 amends section 7A of the FOI Act to require the Scottish Ministers to consider the exercise of the section 5 power before complying with the existing requirement to report to Parliament on its exercise.

Costs

60. Since 2013, every second year the Scottish Government must lay before the Parliament reports about the exercise of the section 5 power. The cost of identifying and considering new bodies for designation already happens. Adding a further two factors to the decision-making process will not add any significant costs to the process. For example, it is currently a function of the Commissioner²⁸, from time to time, to make proposals to Scottish Ministers for the exercise by them of their functions under sections 4 and 5 of the FoI Act. Any proposal from the Commissioner will have been researched, published and funded through the budget set by the Scottish Parliament. Therefore there is no additional cost.

Timescale

61. The process of making the reports will change but the requirement to report to Parliament will remain on schedule on or before 31st October 2027. The pace of designations will be agreed with stakeholders, the Commissioner and the public to ensure the architecture of FoI is not compromised.

Section 5

62. Section 5 provides that an information request can include an electronic address for correspondence.

²⁸ Section 43(4) of the FoI Act

Costs

63. It is anticipated that the implementation cost will be zero as overwhelmingly the systems are already in place for electronic communications.

Savings

64. Savings will be generated through an increase in electronic FOI requests, responses, internal reviews and appeals. Less staff and equipment will be required to manage the physical recording and responding to postal communications, postage stamps requirements will reduce, and staff may be freed up to attend to other duties. There is also an environmental impact as less paper and postal services are required.

Timescale

65. The provision will come into force on Royal Assent so the savings will be immediate.

Section 6

66. Section 6 amends the deadline for a Scottish public authority to provide information under the FOI Act when “reasonable” clarification is sought from the requestor. It further repeals the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 which extended the statutory time limit for responding to information requests to up to 60 working days for grant-aided and independent special schools.

Costs

67. Organisations will be more proactive in responding to FOI requests promptly so that queries on clarification are identified early so they have sufficient time to respond to the valid information request. This has the advantage of ensuring the facts of the FOI request will remain fresh to the public authority and able to meet the response time of up to 20 working days.

68. Section 6 provides an equal 20 working day response time. For independent and special schools, they always had a duty to respond “promptly” and now have 20 working days to answer the FOI request. So the cost of processing FOI requests should remain the same.

Savings

69. The process and pace of responding to information requests is expected to increase. This will reduce staff time in the duplicate handling of the same information request beyond the 20 working days.

Timescale

70. The provision will come into force on Royal Assent so the savings to staff time will be immediate, and providing the information to the requestor should be quicker.

Section 7

71. Section 7 repeals the requirement on Scottish public authorities to make publication schemes, and Section 8 repeals the power of the Scottish Information Commissioner to make model publication schemes.

Costs

72. Authorities will continue to face a publication requirement following the repeal of the publication scheme approach, and its replacement with a statutory Code of Practice. Rather than any significant change to the requirement, the impact will be to replace an outdated and ineffective approach with one which is more nimble, understandable, and effective. It is not anticipated that this will have any significant impact on costs for public authorities, as they will remain broadly the same.

73. Ceasing compliance with the current Model Publication Scheme creates the need for staff training in the new procedures and in the adoption of new systems. The training costs to prepare for the change in the law can be met for free from the Commissioner or met within the training figure previously provided.

Section 9

74. Section 9 introduces a new exemption if information is provided to the Commissioner for the purposes of an application made under section 47(1)."

Costs

75. The public will be clearer about what information can be accessed and this will consequently reduce the small number of information requests, reviews and appeals subject to this exemption. It is anticipated to be a marginal reduction in staff time and administrative saving.

Section 10

76. Section 10 confers a new power on the Scottish Information Commissioner to require any officer, employee or agent of a Scottish public authority to provide information which is required for the exercise of the Commissioner's functions.

Costs

77. This introduces the ability to enforce an existing requirement but is not expected to increase costs that a designated body should reasonably expect to meet. The costs for the Commissioner's office are anticipated to be minimal and subsumed within general day-to-day business costs. From practice, it is anticipated that the power to require additional information will be used sparingly when relevant information is not forthcoming through other standard investigative routes.

Section 11

78. Section 11 now permits a requester to make an application to the Commissioner for a decision on whether the Commissioner has complied with their duties under the FoI Act.

Cost

79. There is an additional cost expected for appeals to the Commissioner, however it is anticipated that there will be a low number of appeals received and absorbed within the current budget. In 2023-24, the Commissioner received 117 information requests and 7 requests²⁹ for review, which is a necessary procedure before an appeal can be lodged. Approximately 0.7% of requests under the FOI Act go on to be appealed. Therefore, it is reasonable to assume the Commissioner will receive about one appeal per year, with anticipated contingency cost of £20,000. The additional costs to the Commissioner are absorbed as outlined in Table 5.

Section 12

80. Section 12 confers on the Commissioner the power to issue enforcement notices in respect of a failure by a Scottish public authority to comply with a provision of a code of practice issued under the FOI Act.

Cost

81. Compliance with the FOI Codes of Practices should be a cost that a designated public body should reasonably expect to meet and borne out of their existing budgets.

82. This is a new administrative power and there will be an associated cost to issue the notice. However, only further non-compliance would incur the additional cost of the legal proceedings for both the Commissioner and the public authority.

83. It is anticipated that most issues related to a failure to comply with a provision of the Code of Practice would be resolved without the need to issue an Enforcement Notice, in much the same way as these issues are currently resolved. The power to issue an Enforcement Notice in these circumstances would generally be viewed as a 'last resort', to be used in circumstances where an issue with an organisation's compliance with the Codes of Practice could not be resolved through a collaborative, informal route. Experience to date suggests that such circumstances would be extremely rare, but awareness of the Commissioner's ability to issue such notices would help to address issues and ensure compliance before a formal notice would be required.

84. The Commissioner has issued six Enforcement Notices since FOI came into effect in 2005. These Enforcement Notices were all issued in 2016, with each relating to a failure to adopt and maintain a publication scheme by a recently designated body. The cost of issuing these Enforcement Notices was absorbed within the cost of the Commissioner's day-to-day activity and is calculated to be half a day drafting for a Grade 4 investigation officer with these costs being subsumed within our general day to day regulatory business costs. All Enforcement Notices issued to date have been complied with.

²⁹ <https://www.foi.scot/sites/default/files/2024-10/2023-24%20Annual%20Report%20and%20Accounts.pdf>

85. In practice, the *threat* of future enforcement, and subsequent reporting to Parliament on this activity, acts as a preventative measure which drives improvements in practice without the need to issue notices. It is estimated one a year at most although likely to be fewer. A contingency of £20,000 for such actions would seem reasonable if such proceedings were to arise.

86. Enforcement Notices can be referred to the Court of Session if any aspect of the notice is not complied with (including the timescale for compliance as specified in the notice). To date all Enforcement Notices have been complied, without the need for referral to court and so there is limited evidence as to costs and suggest issuing an enforcement Notice is usually sufficient to ensure compliance. The procedure is that the Commissioner can certify to the court any failure to comply with an enforcement notice. Should there be a court action associated with and Enforcement Notice, the costs incurred would be a matter for the public body to consider and address through their litigation funds.

Section 13

87. Section 13 repeals the power of the First Minister to override the Commissioner's decision notice or enforcement notice to the Scottish Government.

Cost

88. This will result in a potential saving, given that the First Minister can no longer sign and issue to the Commissioner a certificate stating that they will not comply by the notice issued by the Commissioner.

Section 14

89. Section 14 of the Bill enables the Commissioner to refer a decision notice to the Court that imposes on a Scottish public authority, a deadline for taking steps specified in the decision notice. It also allows for the Commissioner to refer a decision notice to the Court, imposing a deadline on a Scottish public authority to take steps specified in the decision notice. In legal terms this would allow the Court to deal with the authority in such circumstances as if it has committed a contempt of court. Contempt proceedings usually take place during the course of a trial or existing criminal proceedings and public information on the costs of contempt cases is not easily obtainable. There have previously been at least two cases where a petition was made to the Court of Session to find a public body in contempt of Court: *Kenneth Smith v Scottish Ministers* (2015)³⁰ and (2016)³¹. Costs and/or expenses for these cases are not publicly available but both involved raising a petition to the Outer and Inner Courts of the Court of Session for a finding for contempt. It is anticipated that referring a decision notice to the Court would likely be a more straightforward procedure than for a full judicial review or appeal of a decision by the Commissioner. However, given the similarity of the process for lodging a petition a finding of contempt, it is expected that referring a decision notice would incur, at most, similar expenses as a judicial review or an appeal of a decision made by the Commissioner.

³⁰ <https://www.bailii.org/scot/cases/ScotCS/2015/2015CSOH15.html>

³¹ <https://vlex.co.uk/vid/petition-by-kenneth-smith-878395249>.

Cost

90. It is anticipated that any situation where a public body would fail to comply with a Decision Notice issued by the Commissioner would be extremely rare, as experience to date has shown. Most recent evidence for such costs comes from the appeal made by the Scottish Ministers in appealing Decision 004/2023 in Case: XA10/23. FOIs have revealed that this case cost the Scottish Government a total of £73,024, including £27,470 paid to the Commissioner in judicial expenses³². Taking this as a guide, it is anticipated that costs to the Commissioner of defending an appeal or referring a decision notice can reasonably be expected to be in the range of £25,000-£30,000, depending on the complexity and length of the proceedings. Given the rarity of the Enforcement Notices issued, it is not expected that the Commissioner will need to refer many Decision Notices to the Court. Assuming a maximum of one to two ongoing referrals a year would therefore require provision of £50,000 - £60,000.

91. Overwhelmingly, the Commissioner's Decisions are complied with by public bodies within the timescales set out in the Decision Notice. There has never yet been a situation where the Commissioner has had to enforce an Information or Enforcement Notice through the courts, so no comparable costs for this activity are available. If they are incurred, they would be met through its contingency funding. Given court costs, as outlined above, a contingency of approximately £60,000 should be allocated. It is anticipated that this amendment will largely act as a deterrent measure which supports and ensures compliance with timescales set out in the Commissioner's Decision Notices. It is anticipated that bodies will comply given court fees, reputational damage, legal representation and the time and administrative burden that would be imposed on senior staff.

92. The only court experience to date relates to appeals against the Commissioner's decisions by public bodies. These types of proceedings are more expensive. The cost of current appeals is typically between £25k-£35k. Given that the costs of these newly created proceedings will be cheaper and given the costs to both parties and to SCTS, a contingency cost of £60,000k is appropriate.

Section 15

93. Section 15 introduces: a new section 60A which imposes a duty on a Scottish public authority to take reasonable steps to organise the information that it holds on its functions, make that information available and accessible to the public and requires an authority to comply with any code of practice issued by the Commissioner; the new section 60B confers on the Commissioner the power to issue a code of practice in relation to the duty imposed by section 60A. Organisations should already be doing this under existing law, however, it is appreciated that not all organisations currently do, and so this provision is being made for designated bodies.

³² <https://www.gov.scot/publications/foi-202400434474/>

Costs and Savings

94. There will be a cost to the Commissioner's office for drafting and consulting on the code of practice under section 15. The resource requirement is anticipated at 0.75 for one Grade 4 officer and this cost is incorporated into the overall cost to the Commissioner. See Table 5 below.

95. The cost of complying with the duty to publish would be equivalent to current, existing costs for organisations. The duty may place additional costs on a public authority to fulfil this duty depending on the efficiency of its existing records management and information storage systems. Costs may include staff and IT systems, if the current systems are inadequate.

96. Section 15 introduces the duty to proactively publish information, and this is expected to reduce FOI requests and the associated legal and administrative responsibilities. For example in evidence to the PAPLS Inquiry, NHS Lanarkshire stated that it had focused on increased proactive publication after analysing particular areas in which it received a high volume of FOI requests. It confirmed that this approach had succeeded in reducing the number of FOI requests in these areas.³³ The impact of this provision will therefore be savings. Public authorities are expected to rely upon the Code of Practice issued by the Commissioner's Office underpinned by free familiarisation resources and training. However, within organisations there will be discussion on the detail and impact which may result in consideration of organisational change. That process will be led by the designated FOI Officer (see below). It is not expected that organisations should purchase training but the Member appreciates that a few of the 10,000 designated public authorities may opt to do so. In scoping the best estimate of the impact of section 15, the Member is satisfied that the work required to implement is not equivalent to the introduction of the socio-economic duty in the Equality Act 2010 or indeed the provisions on trauma informed practice in the Victims, Witnesses and Justice Reform (Scotland) Bill given FOI duties already exist. Proactive publication should already happen under existing law and this Bill provides a more effective mechanism to deliver that responsibility.

Section 16

97. Section 16 establishes a new office of freedom of information officer within Scottish public authorities. All public bodies currently listed in Schedule 1 will be required to appoint someone as the statutory FOI Officer. Newly designated bodies will have to appoint or allocate the role to an existing staff member. This proposal comes from representations from FOI practitioners over many years who have argued that they require a statutory authority like the data protection officer role. They advise of the difficulties within some existing designated public authorities in ensuring compliance with current FOI law with those carrying out such roles not having the authority or status to insist that information is provided. They report this is leading to both much time wasting and potentially failures to comply with the law. The intention of this provision is not to add to cost but to ensure current law is complied with and reduce costs. There should be no additional costs for bodies who are already designated. For bodies designated under the process proposed in this Bill the cost of an FOI Officer would be part of developing their FOI function. It is envisaged that less than 10% of organizations would be required to employ a new member of staff as an FOI officer.

³³ Para 133 of the PAPLS Committee's report at <https://bprecdn.parliament.scot/published/PAPLS/2020/5/19/Post-legislative-scrutiny--Freedom-of-Information--Scotland--Act-2002/PAPLS052020R2.pdf>

98. A designated role will ensure capacity is addressed at the appropriate staff level to ensure the timescales, volume of work, consistency, accuracy and completeness of responses are managed appropriately. Designated bodies should already have FOI teams employed or individual staff who can perform the role. It is envisaged that most organisations will not employ any new staff as the policy intention is to empower and give status to existing FOI practitioners to enable them to comply with FOI law.

99. The Member recognises that it would be inappropriate to replicate the salary costs of the Statutory Data Protection Officer (DPO) as the remit of an FOI officer is likely to be less partly because there are no huge fines under the FOI Act for getting decisions wrong. For comparison, a large local authority recruited a subject access officer on a scale of £34,922 to £40,664.³⁴ A senior officer, with responsibility for managing a specialist team of DPOs, is advertised at £42,266 to £49,186.³⁵

100. The variety of public bodies designated under the FOI Act means that it is impossible to standardise the salary of the FOI officer role and scoping work had identified a range of salaries that may be appropriate, but each public authority has discretion to remunerate at a level that fits the role given their size and complexity, or otherwise, of the organisation. It is not envisaged that existing FOI practitioner roles will require regraded.

101. Practitioners consulted suggest for medium to large organisations, an FOI/Information Governance officer role are generally advertised in the £30-£40k range.³⁶ For most organisations it is envisaged that costs will be significantly less, which can be incorporated in current roles and budgets on data protection and records management.

102. The Higher and Further education sector receives a significant number of information requests. An FOI officer may be appointed on a university grade 6, with a salary range of £33,482 – £40,497 inclusive of on costs this would amount to £42,777 – £51,896. Overtime is applicable for Grade 6 however this is not expected in this role. Laptop and equipment are estimated at £3k, office accommodation, heat, light, £5k and insurance £2k. Travel costs are not considered necessary. For the basic salary of £33,482 the total annual salary cost, including NIC and pension is £42,777 plus £10,000 capital and operational costs.

103. Most reasonable size employers have FOI units, with staff having different roles and functions. For example, there may be administrative staff who receive the FOI request and send on to the appropriate person to draft and send back the response. An Administrative Officer in the Scottish Government is on a salary of approximately £26K but the FOI officers who draft the response and compile the draft responses are higher executive grades and may be on a pay scale at Grade 4, points 6-8, which is £45,428 - £54,166 as a generalised costing.

³⁴ <https://myjobscotland.gov.uk/councils/glasgow/glasgow-city-health-and-social-care-partnership/jobs/subject-access-officer-business-development-421519> Accessed 1st May 2025

³⁵ <https://myjobscotland.gov.uk/councils/glasgow/glasgow-city-health-and-social-care-partnership/jobs/senior-officer-business-development-421520> Accessed 1st May 2025

³⁶ https://www.glassdoor.co.uk/Salaries/scotland-information-governance-officer-salary-SRCH_IL.0,8_IS7289_KO9,39.htm?countryRedirect=true.

104. It is envisaged there will be no additional costs for most organisation newly designated by this Bill as staff are already in place and performing similar functions e.g. to provide information to the contracting authority to enable them to comply with the FOI Act. The costs of setting up a FOI system are likely to be greatest for large organisations in receipt of multiple government contracts such as multinationals.

Table 3 - Cost of An FOI Officer if additional staff are employed

	Annual Salary	Capital Cost	National Insurance (Cat.A; 15%)	Pension Contributions (17.5%)	Total Cost
Small Organisation	Grade D SP 24-29 £25,793 - £27,182 £26,295	£5,000	£3,944	£4,601	£39,840
Medium Organisation	Grade H £36,577 - £40,339 £38,082	£7,500	£5,712	£6,664	£57,958
Large Organisation	Grade K £49,194 - £53,786 £51,451	£10,000	£7,717	£9,003	£78,171
Information Officer (average Salary)	£38,000	£5,000	£5,700	£6,650	£55,350
Information Officer (Salary Range)	£35,000-£40,500	£5,000	£5,250-£6,075	£6,125 - £7,088	£51,375-£58,663

Section 17

105. Section 17 adds Audit Scotland to the list of public bodies to which the Scottish Information Commissioner may disclose information in specified circumstances.

Cost

106. Whilst there is an administrative cost, the cost of sharing existing data will be marginal. Effective lines of communication already exist with Audit Scotland.

Section 18

107. Section 18 extends the scope of an existing offence to circumstances where information is destroyed before any request for that information has been made, where that destruction is done with the intention of preventing the disclosure of that information.

Section 19

108. Section 19 removes the existing three-year time limit on the bringing of proceedings in respect of an offence under section 65, so it does not begin until the commencement of a criminal investigation.

Costs of s18 and s19

109. It is anticipated that the impact of amendments to section 18 and 19 of the FOI Act would principally be a deterrent one.

110. As the Commissioner has yet to take forward the prosecution of an offence under section 65 of FOISA they do not hold any data which would indicate the potential cost of such an action. Therefore, costs to the COPFS and SCTS, if any, are expected to be minimal and met by those bodies, as in any other criminal case. It is not expected there will be any prosecutions most years. As well as court costs, the costs of the police investigation need to be included. A prosecution would be unusual and cost provision should be made for a criminal proceeding every 20 years. Given all of the costs of criminal cases provision of £20,000 should be allocated. This is taking into account court costs in the table below.

Table 4 - Estimated Scottish Courts Costs³⁷

	Sheriff Court (summary)	As 2023/24 costs	Sheriff Court (Solemn)	As 2023/24 costs	High Court	As 2023/24 Costs
Prosecution costs (COPFS)	£444	574.50	£4,363	5,645	£67,568	87,421.20
Court Costs (SCTS)	£430	556.30	£2,190	2833.50	16,650	21,542.20
Legal assistance costs	604	781.50	1,622	2098.60	16,080	20,804.70
Total	£884	1912.30		10,577.10		129,768.10

³⁷ Source Para 36 <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/dog-theft-scotland-bill/introduced/financial-memorandum-accessible.pdf>

THE SCOTTISH ADMINISTRATION

111. It is not anticipated that the Scottish Government will need to recruit additional staff because of the Bill. There has been recent, significant investment in the FoI function. In 2023, the Minister for Parliamentary Business detailed an improvement plan structured around the five areas of concern identified by the Scottish Information Commissioner in his [fourth progress report on the Intervention into FOI performance in Scottish Government](#). The areas of improvement were: [Clearance Procedures](#), [Quality Assurance](#), [Case File Records Management](#), [Case Handling](#) and [FOI Monitoring Requests](#).³⁸ The investment of the Scottish Government in its compliance with the FoI Act has included hiring of additional staff to provide a network of skilled case-handlers who are resilient and responsive to the increasing volume and complexity of Scottish Government's cases. The recent investment to support a range of training and development ensures the agility of the improved service to meet the requirements of the Bill.

LOCAL AUTHORITIES

112. An increasing number of providers of public services operate outside the FoI Act due to a variety of business models created by local authorities to provide services. For example, in 2018 an Audit Scotland report gave some indication of the range of organisations created by designated bodies to deliver public services. It was reported that councils were using an “estimated” 130 arms-length external organisations (ALEOs), which had an annual spend of more than £1.3 billion.³⁹ It is anticipated that some of those ALEOs may be covered by redefining a publicly owned company under section 6 of the Bill and that will create savings for the local authority and may result in increased costs for the ALEOs.

113. Under section 13, there is provision for fees for disclosure in specific circumstances and set out in regulations.⁴⁰ This is an opportunity for local authorities to recover their costs if the threshold for answering FoI requests, of £600, is exceeded. However, charging happens comparatively rarely. The cost of administering a revenue stream (staff to calculate the service charge, invoice, credit control collection, etc) is not considered cost effective by some local authorities.⁴¹ There will be a saving to the local authority with costs transferred to the ALEO so overall no increase in costs

OTHER BODIES, INDIVIDUALS AND BUSINESSES

114. A new duty to proactively publish information, which is enforceable, may also bring benefits for the requestor and designated body. The Executive Lead for Information Governance and Caldicott Guardian for a Health Board in Scotland recently wrote to all MSP and MP researchers to bring to their attention the current scale, workload and impact of Freedom of Information requests being made of the Board under the FoI Act. They point out that “overall, requests have risen by over 60% in the last five years to around one thousand per year. We have therefore had to recruit additional team members to handle these requests during what are considered difficult fiscal circumstances. The proportion of requests generated by MSP and MP

³⁸ <https://www.gov.scot/publications/freedom-of-information-foi-improvement-plan-2024/>

³⁹ <https://audit.scot/publications/councils-use-of-arms-length-organisations>

⁴⁰ <https://www.legislation.gov.uk/asp/2002/13/section/13>

⁴¹ <https://bprcdn.parliament.scot/published/PAPLS/2020/5/19/Post-legislative-scrutiny--Freedom-of-Information--Scotland--Act-2002/PAPLS052020R2.pdf>

researchers has risen from 15% to 26% in the same timeframe. In April and May 2024, in the run up to the elections, this figure rose to 39% and 28%, respectively.” They believe this to be an underestimate. They wanted to raise awareness and point out that often, “the data are available on our website within Board papers and we have our regular meeting schedules with MPs and MSPs, during which we can hopefully explore areas of interest.” Therefore it is important to manage this growing trend. Proactive publication as proposed in this Bill will have the overall effect of savings to such bodies

Scottish Information Commissioner

115. The Commissioner is an independent office holder who promotes and enforces the FOI Act. The Commissioner is responsible for compliance with other legislation too.⁴² The Commissioner is funded through the Scottish Parliamentary Corporate Body (SCPB) to deliver a range of functions specified in the FOI Act and take account of increased workload. For example, the Commissioner received a 12% increase in appeals in 23-24. However the budget can restrict the ability of the Commissioner’s office to fulfill its functions. For example, the SPCB refused the Commissioner’s request for additional funding for staff to work in the period 2025/26.⁴³

116. The Bill enables a reactive and timely consideration of bodies for designation under Section 5 of the FoI Act. Such further designations will have a resource impact for the Commissioner. Each designation brings with it the requirement to train, provide guidance, enforce and monitor. The degree of the resource requirement would be proportionate to the timing, sector and breadth of the designation under consideration. For example, the designation of Registered Social Landlords and their subsidiaries required the Commissioner to employ two additional full-time Grade 4 staff.

117. Some technical provisions (section 3) of the Bill will extend the scope of the FOI Act to defined publicly owned companies which will have an immediate effect requiring the Commissioner’s staff to support them to comply.

118. There will be a cost to the Commissioner’s office in terms of advising the public and organisations about who is covered, providing targeted advice, support and guidance to help organisations prepare for FoI and the investigatory resource required to determine whether or not individual organisations are covered.

119. The partial revocation of section 48 of the FOI Act will extend current powers to investigate cases involving the Commissioner. In 2023-24, the Commissioner received 117 information requests and 7 requests for review⁴⁴, which is a necessary procedure before an appeal can be lodged. Approximately 0.7% of requests under the FoI Act go on to be appealed. Therefore, it is reasonable to assume the Commissioner will receive about one appeal per year as a result of this provision.

⁴² <https://www.foi.scot/foi-law>

⁴³ [SPCB Minute 28 November 2024](#)

⁴⁴ Pg.13 Annual Report 23-24 <https://www.foi.scot/sites/default/files/2024-10/2023-24%20Annual%20Report%20and%20Accounts.pdf>

120. This Bill proposes the revocation of the publication scheme duty, replacing this with a new duty to proactively publish, underpinned with a new Code on Publication, prepared by the Commissioner and agreed by Parliament within 12 months of the date of Royal Assent. It is anticipated that the preparation and development of the Code, alongside the subsequent training and monitoring requirements, would require an additional two full time Grade 4 staff at the Commissioner's office for two years. However, the overall objective of this proposal is to contribute to a more sustainable FOI regime, driving down FOI request numbers to organisations and ultimately appeal numbers to the Commissioner. The cost of supporting the new designation depends on the size and nature of any designation, but the Commissioner's office broadly estimates that dealing with regular and ongoing designation would require 0.75 of one Grade 4 officer in enforcement, amounting to £48,488 per annum and 0.5 of one Grade 4 officer working on training, support and guidance for new designees, which is estimated at £32,325 per annum, alongside one full time administration officer to provide support in both areas, which is estimated at £50,745 per annum, excluding capital costs.

121. The Commissioner's office is a demand-led organisation, and the indicative costs are based on current workload and remit etc., illustrating the inconsistent nature of FOI work. All changes within the Bill are likely to have a time-limited administrative impact on the Commissioner, which are likely to require additional resources and an indicative figure for employing two additional Grade 4 officers and one Grade 3 officer would amount to approximately £370,560 over two years.

Table 5 – Costings Over Two Years to the FOI Commissioner

FTE	Grade	Point	ANNUAL TOTALS 2025/26		
			Salary	E'er NIC	E'er pension
1.00	3	1	35,769	4,614.75	10,362.28
1.00	4	1	45,428	6,063.60	13,160.49
1.00	4	1	45,428	6,063.60	13,160.49
		Annual total for 3 staff	126,625	16,742	36,683
		Total for 2 years (not taking into account increments and any wage increases)	253,250	33,484	73,366
		Total staff cost	360,100		
		Capital cost of equipment and desk (approx.)	10,460		
		Total	370,560		

Table 6 – Overall Annual Costs

ANNUAL ONGOING COSTS ON THE SCOTTISH ADMINISTRATION			
BODY	ITEM	UNIT COST	TOTAL
Scottish Government	Costs of training on section 1 duty	£0 - £1,000 (para. 39)	£0 - £1,000
Scottish Courts and Tribunal Service	Court costs	£1912.30 (Table 4) ⁴⁵	£1912.30
ANNUAL ONGOING COSTS ON LOCAL AUTHORITIES			
Local Authorities	Costs of training on section 1 duty	£0 - £1,000 (para. 39)	£0 - £32,000 ⁴⁶
ANNUAL ONGOING COSTS ON OTHER BODIES ETC.			
Scottish Information Commissioner	Appeal/court contingency fees	£20,000 (para. 79) £20,000 (Para. 85) £60,000 (para. 92) £20,000 (para. 110)	£305,280
	New staff for new and increased duties	£185,280 (Table 5)	
Newly designated bodies	Responding to requests for information	£2,000 to £50,000 (para. 27) for each body	£500,000 to £2 million for all bodies (para. 44)
	Employing FOI officer	£39,840 to £78,171 (Table 3) for each body	
Existing public authorities (other than Scottish Government and local authorities)	Costs of training on section 1 duty	£0 - £1,000 (para. 39)	£0 - £79,171 (for each body)
	Employing FOI officer (if do not have one)	£39,840 to £78,171 (Table 3) for each body	
Section 3 bodies (not currently captured by FOI Act)	Responding to requests for information	£2,000 to £50,000 (para. 27) for each body	£41,840 - £128,171
	Employing FOI officer	£39,840 to £78,171 (Table 3) for each body	

⁴⁵ The new offence is a summary offence

⁴⁶ Based on each of 32 local authorities undertaking training

This document relates to the Freedom of Information Reform (Scotland) Bill (SP Bill 72) as introduced in the Scottish Parliament on 2 June 2025

FREEDOM OF INFORMATION REFORM (SCOTLAND) BILL

FINANCIAL MEMORANDUM

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