

Freedom of Information Reform (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 72-EN), a Financial Memorandum (SP Bill 72-FM), a Policy
Memorandum (SP Bill 72-PM), a Delegated Powers Memorandum (SP Bill 72-DPM) and
statements on legislative competence (SP Bill 72-LC).**

Freedom of Information Reform (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to amend the Freedom of Information (Scotland) Act 2002 to make provision in relation to the designation of a Scottish public authority; to make provision as regards the proactive publication of information; to make further provision as regards enforcement; and for connected purposes.

5 *Access to information held by Scottish public authorities*

1 General entitlement

In section 1 (general entitlement) of the FOI Act, after subsection (5) insert—

10 “(5A) The authority must apply a presumption in favour of disclosing the information when considering whether to apply any provision of Part 2 which does not confer an absolute exemption.”.

2 Further powers to designate Scottish public authorities

(1) In section 5 (further power to designate Scottish public authorities) of the FOI Act, after subsection (5) insert—

15 “(6) When deciding whether to make an order under subsection (1), the Scottish Ministers must consider any relevant proposals made by the Commissioner under section 43(4).”.

(2) After section 5 of the FOI Act insert—

“5A Power of the Parliament to designate Scottish public authorities

20 (1) The Parliament may by resolution designate as a Scottish public authority for the purposes of this Act any person mentioned in subsection (2) who—

(a) is neither for the time being listed in schedule 1 nor capable of being added to that schedule by order under section 4(1), and

(b) is neither a public body nor the holder of any public office.

(2) The persons are those who either—

25 (a) appear to exercise functions of a public nature, or

(b) are providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority.

- (3) A resolution under subsection (1) may designate a specified person or persons falling within a specified description.
- (4) A resolution under subsection (1) made by virtue of—
 - (a) subsection (2)(a) must specify the functions of a public nature which appear to be exercised,
 - (b) subsection (2)(b) must specify the service being provided.
- (5) Before making a resolution under subsection (1), Parliament must make arrangements for one of its committees or sub-committees to—
 - (a) consult—
 - (i) every person to whom the resolution relates, or
 - (ii) persons appearing to them to represent such persons, and
 - (b) also consult such other persons as they consider appropriate.
- (6) A power of the Parliament to make a resolution under this section includes power to make—
 - (a) different provision for different purposes,
 - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (7) Immediately after any such resolution is passed, the Clerk must send a copy of it to the King's Printer for Scotland ("the King's Printer").
- (8) Part 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies to the resolution as if it were a Scottish instrument.
- (9) Section 41(2) to (5) of that Act and the Scottish Statutory Instruments Regulations 2011 (S.S.I. 2011/195) apply to the resolution—
 - (a) as if it were a Scottish statutory instrument,
 - (b) as if the copy of it sent to the King's Printer under subsection (7) were a certified copy received in accordance with section 41(1) of the Interpretation and Legislative Reform (Scotland) Act 2010,
 - (c) as if references to "responsible authority" were references to the Clerk, and
 - (d) excluding regulation 7(2) and (3) of the Scottish Statutory Instruments Regulations 2011."

3 Publicly-owned companies

In section 6 (publicly-owned companies) of the FOI Act, in subsection (1) after paragraph (b), insert "or

- (c) by Scottish Ministers and any other Scottish public authority listed in schedule 1, other than an authority so listed only in relation to information of a specified description."

4 Public authorities to which Act has limited application

In section 7 (public authorities to which Act has limited application) of the FOI Act, after subsection (3), insert—

“(3A) Nothing in this Act applies to information held by a person designated as a Scottish public authority by resolution under section 5A if the resolution is made by virtue of—

(a) subsection (2)(a) of that section and the information does not relate to the functions, or

(b) subsection (2)(b) of that section and the information does not relate to the service,

specified in the resolution.”.

5 Reports on section 5 power

In section 7A (reports on section 5 power) of the FOI Act—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers must consider the exercise of the section 5 power during the reporting period and, in accordance with this section, lay before Parliament reports about the exercise of the section 5 power.”,

(b) after subsection (5) insert—

“(5A) Within twenty sitting days of the report being laid—

(a) the report must be debated by the Parliament, and

(b) the Parliament must by resolution determine whether to approve the report.”,

(c) In subsection (6), after the definition of “section 5 power” insert—

““sitting day” means any day when the office of the Clerk of the Parliament is open but not when the Parliament is in recess or dissolved.”.

6 Requesting information

In section 8 (requesting information) of the FOI Act, in subsection (1)(b), after “correspondence” insert “, which may include an electronic address”.

7 Time for compliance

(1) In section 10 (time for compliance) of the FOI Act, for subsection (1) substitute—

“(1) Subject to subsections (1A), (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly, and in any event by not later than the twentieth working day after the receipt by the authority of the request.

(1A) In a case where section 1(3) applies, the period—

(a) beginning with the day on which the notice is given, and

(b) ending with the day on which the further information is received by the authority,

is to be disregarded in calculating, for the purposes of subsection (1), the twentieth working day mentioned in that subsection.”.

- (2) The Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 are repealed.

8 **Publication schemes and Model publication schemes**

In the FOI Act, the following provisions are repealed—

- (a) section 23 (publication schemes),
- (b) section 24 (model publication schemes),
- (c) section 25(3)(a)(ii),
- (d) in section 73, the definition of “publication scheme”.

Exempt Information

9 **Information provided to the Commissioner**

After section 41 of the FOI Act insert—

“41A Information provided to the Commissioner

Information is exempt information if it is provided to the Commissioner for the purposes of an application made under section 47(1).”.

The Scottish Information Commissioner

10 **General functions of Commissioner**

In section 43 (general functions of Commissioner) of the FOI Act, after subsection (3) insert—

- “(3A) The Commissioner may require any officer, employee or agent of a Scottish public authority to provide information to enable the discharge of the Commissioner’s functions under sections 44, 49, 50 and 51.”.

Enforcement

11 **When application excluded**

Section 48(a) of the FOI Act is repealed.

12 **Enforcement notices**

In section 51 (enforcement notices)—

- (a) in subsection (1), after first “Act” insert “or with a provision of a code of practice issued under section 60, 60B or 61,”,
- (b) after subsection (1) insert—

- “(1A) The Commissioner must consult the Keeper of the Records of Scotland before giving an enforcement notice to a Scottish public authority (other than the Keeper) in relation to compliance with the code of practice issued under section 61.”.

13 Exception from duty to comply with certain notices

In the FOI Act the following provisions are repealed—

- (a) section 49(9),
- (b) section 51(5),
- (c) section 52 (exception from duty to comply with certain notices).

14 Failure to comply with notice

In section 53 (failure to comply with notice) of the FOI Act in subsection (1)—

- (a) in paragraph (a), after “subsection (6)(b)” insert “or (c)”,
- (b) the “or” after paragraph (b) is repealed,
- (c) after paragraph (c), insert “or
- (d) a timescale for compliance specified in terms of section 49(6)(c),”.

*Codes of practice***15 Proactive publication duty and publication code**

After section 60 (code of practice as to functions under this Act) of the FOI Act insert—

“60A Proactive publication duty

- (1) A Scottish public authority must take reasonable steps to—
 - (a) organise and keep up to date the information, relevant to its functions, which it holds, and
 - (b) make that information available to the public in an accessible form and manner,(the “proactive publication duty”).
- (2) In complying with the proactive publication duty, a Scottish public authority must—
 - (a) comply with any code of practice issued by the Commissioner under section 60B, and
 - (b) have due regard to how members of the public would be likely to access the information that the authority holds.

60B Code of practice on publication

- (1) The Commissioner must prepare a draft code of practice setting out how a Scottish public authority is to comply with the proactive publication duty (the “publication code”).
- (2) The publication code must in particular specify—
 - (a) information which a Scottish public authority must publish in the public interest,
 - (b) how that information should be made available and searchable, and
 - (c) how long that information should be available for.

- (3) The Commissioner may not issue the publication code unless—
- (a) the Commissioner has consulted—
 - (i) the Keeper of the Records of Scotland,
 - (ii) any Scottish public authority listed in schedule 1 or such persons as appear to the Commissioner to represent those authorities,
 - (iii) any person designated by means of an order under section 5,
 - (iv) the Scottish Ministers, and
 - (v) such other persons as appear to the Commissioner to be relevant, and
 - (b) a draft of the publication code has been laid before and approved by resolution of the Parliament.
- (4) A Scottish public authority must comply with the publication code.
- (5) The Commissioner must lay a draft publication code before the Parliament within 12 months of this section coming into force.
- (6) The Commissioner may from time to time publish a revised publication code, and references in this Act to a publication code include references to a revised publication code.”.

16 Freedom of information officer

After section 61 (code of practice as to the keeping, management and destruction of records) of the FOI Act insert—

“PART 6A

FREEDOM OF INFORMATION OFFICERS

61A Designation of a freedom of information officer

- (1) A Scottish public authority must designate a freedom of information officer.
- (2) When designating a freedom of information officer, the authority must have regard to the professional qualities of the proposed officer, in particular—
 - (a) the proposed officer’s expert knowledge of freedom of information law and practice, and
 - (b) the ability of the proposed officer to perform the tasks mentioned in section 61C.
- (3) The authority must provide the officer’s name and correspondence address to the Commissioner.

61B Position of freedom of information officer

- (1) A Scottish public authority must ensure that the freedom of information officer is involved, properly and in a timely manner, in all matters which relate to access to information.
- (2) The matters referred to in subsection (1) include, but are not limited to, the proactive disclosure of information and the disclosure of information on request under this Act.

- (3) The authority must provide the freedom of information officer with the necessary resources to enable the freedom of information officer to—
- (a) perform the tasks mentioned in section 61C, and
 - (b) maintain their expert knowledge of freedom of information law and practices.
- (4) The authority—
- (a) must ensure that the freedom of information officer does not receive any instructions which conflict with their duties and responsibilities mentioned in section 61C,
 - (b) may allow the freedom of information officer to perform a task or fulfil a duty other than those mentioned in 61C, but must ensure that such tasks or duties do not conflict with their duties and responsibilities under section 61C,
 - (c) must not dismiss or penalise the freedom of information officer for performing the tasks mentioned in section 61C.
- (5) The freedom of information officer, in the performance of this role, must report to the highest management level of the authority.

61C Tasks of freedom of information officer

- (1) The freedom of information officer must—
- (a) inform and advise any officer, employee or agent of the authority on their obligations under this Act,
 - (b) provide advice to the authority on its compliance with—
 - (i) its duties under this Act,
 - (ii) any code of practice issued under section 60, 60B or 61 of this Act, and
 - (iii) any policy adopted by the authority in relation to the matters specified in sub-paragraphs (i) or (ii),
 - (c) report to a senior level within the authority on the authority's compliance with the matters listed in paragraph (b), and
 - (d) provide such assistance as the Commissioner may reasonably require in the exercise of their functions under this Act.
- (2) In relation to any policy adopted by the authority as mentioned in subsection (1)(b), the freedom of information officer's tasks include—
- (a) assigning responsibilities under those policies,
 - (b) raising the public's awareness of relevant rights and duties,
 - (c) training staff involved in the authority's performance of its duties under this Act, and
 - (d) conducting audits required under those policies.”.

*Miscellaneous and supplemental***17 Disclosure of information to Scottish Public Services Ombudsman, Information Commissioner or to Audit Scotland**

(1) In section 63 (disclosure of information to Scottish Public Services Ombudsman or to Information Commissioner), after paragraph (b) insert “or

(c) Audit Scotland any information so obtained or furnished if it appears to the Commissioner that the information relates to a matter which is, or could, fall within its powers under the Public Finance and Accountability (Scotland) Act 2000.”.

(2) The title of section 63 becomes “**Disclosure of information to Scottish Public Services Ombudsman, Information Commissioner or Audit Scotland**”.

18 Offence of altering etc. records with intent to prevent disclosure

In section 65 (offence of altering etc. records with intent to prevent disclosure) of the FOI Act—

(a) after subsection (1) insert—

“(1A) A person to whom this subsection applies who, with the intention of preventing the disclosure of information were that information to be requested under section 1, destroys or procures the destruction of a record held by a Scottish public authority, is guilty of an offence.”,

(b) in subsection (2), for “Subsection (1) applies” substitute “Subsections (1) and (1A) apply”,

(c) in subsection (3), after “subsection (1)” insert “or (1A)”.

19 Time limit for proceedings

In section 65A (time limit for proceedings) of the FOI Act—

(a) for subsection (2) substitute—

“(2) No such proceedings may be commenced more than 3 years after the commencement of a criminal investigation in relation to the offence or alleged offence.”,

(b) subsection (3) is repealed.

*Final provisions***20 Ancillary provision**

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may make different provision for different purposes.

(3) Regulations under this section are subject to the negative procedure.

21 Interpretation

In this Act, “the FOI Act” means the Freedom of Information (Scotland) Act 2002.

22 Commencement

- (1) This section and sections 1 to 7, 8(c), 9 to 11, 13, 14, 17 to 20, 21, 23 come into force on the day after Royal Assent.
- (2) The remaining provisions of this Act come into force—
- 5 (a) at the end of a period of 12 months beginning with the day of Royal Assent, or
- (b) on such earlier day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—
- (a) include transitional, transitory or saving provision,
- (b) make different provision for different purposes.

23 Short title

10 The short title of this Act is the Freedom of Information Reform (Scotland) Act 2025.

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