



The Scottish Parliament
Pàrlamaid na h-Alba

FINANCE COMMITTEE

AGENDA

22nd Meeting, 2012 (Session 4)

Wednesday 12 September 2012

The Committee will meet at 9.30 am in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Freedom of Information (Amendment) (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

Carole Ewart, Co-Convener, Campaign for Freedom of Information;

David Sillars, Senior Investigating Officer, Commission for Ethical Standards in Public Life in Scotland;

and then from—

Rosemary Agnew, Scottish Information Commissioner, and Euan McCulloch, Deputy Head of Enforcement, Office of the Scottish Information Commissioner;

and then from—

Nicola Sturgeon, Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities, Andrew Gunn, Bill Manager, Mark Richards, Scottish Government Legal Directorate, and Zoe Mochrie, Head of Freedom of Information Unit and Legislation Team, Scottish Government.

3. **Proposed Contingent Liability (in private):** The Committee will take evidence from—

Shona Robison, Minister for Commonwealth Games and Sport, and John Mason, Director for Scottish Government Business Directorate, Scottish Government.

4. **Draft Budget Scrutiny 2013-14:** The Committee will consider its approach to the scrutiny of the Scottish Government's Draft Budget 2013-14.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

FI/S4/12/22/1

Agenda item 3

PRIVATE PAPER

FI/S4/12/22/2 (P)

Agenda item 4

PRIVATE PAPER

FI/S4/12/22/3 (P)

Finance Committee

22nd Meeting, 2012 (Session 4), Wednesday 12 September 2012

Freedom of Information (Amendment) (Scotland) Bill: Stage 1

Purpose

1. The Finance Committee has been designated by the Parliamentary Bureau as lead committee for consideration of the [Freedom of Information \(Amendment\) \(Scotland\) Bill](#). The purpose of this paper is to provide background information for the Committee's evidence sessions with the—

- Campaign for Freedom of Information Scotland and Commission for Ethical Standards in Public Life in Scotland
- Scottish Information Commissioner
- Cabinet Secretary for Infrastructure, Investment and Cities

2. Copies of the Bill and accompanying documents have been circulated along with the [written evidence \(which has been published online\)](#) received in response to the Stage 1 call for evidence and the [SPICe briefing](#) on the Bill.

3. The Committee took oral evidence from the Scottish Government Bill team on [5 September 2012](#).

Background

Approach

4. The role of the lead committee at Stage 1 is to consider and report on the general principles of the Bill. The [Guidance on Public Bills](#) explains that in doing so, the aim of the lead committee is to report—

‘... on the principal purposes of the Bill, rather than the fine detail. (In other words, the report should look at the Bill “in the round” without anticipating the detailed scrutiny that is more properly a matter for Stage 2.) It is normal (but not obligatory) for a Stage 1 Report to include a recommendation to the Parliament as to whether the general principles of the Bill should be agreed to.’

5. The Committee issued a general call for written evidence on 14 June 2012. This was also targeted at specific bodies with a direct interest. It sought views on the general principles and specific questions.

Bill purpose

6. The Bill was introduced by the Scottish Government on 30 May 2012.

7. No committees have been designated as secondary committees. The Subordinate Legislation Committee considered the Bill on [4 September and reported](#) on the delegated powers provisions at sections 4 and 7 as follows—

Section 4 – Historical periods

The 2002 Act provides that certain exemptions from disclosure are not available in relation to records which are more than 30 years old. Other exemptions are no longer available after 60 or 100 years have passed. Section 59 of the 2002 Act currently confers power on the Scottish Ministers to reduce these periods of time but does not allow Ministers to provide for different periods depending on the type of record. This power is subject to the affirmative procedure.

Section 4 of the Bill amends this order-making power to allow the Scottish Ministers to make different provision for records of different descriptions, or exemptions of different kinds, or different purposes in other respects. Section 4 of the Bill will allow for different provision to be made in respect of different records so that, for example, particular kinds of record may become “historical records” sooner than others. The procedure applicable to the exercise of the power is not changed.

The Committee is satisfied in principle with the power in section 4 of the Bill. The Committee is also satisfied that the amended power in section 59 of the 2002 Act will continue to be subject to the affirmative procedure.

Section 7 – Commencement

This section allows the Scottish Ministers to commence sections 1 to 5 of the Bill by order. (Sections 6, 7 and 8 will come into force on the day after Royal Assent.) Such an order may include transitional, transitory or savings provision. Orders made under this power only require to be laid before the Parliament. There is no further form of parliamentary control over such orders.

The Committee is content with the power in section 7 which allows the Scottish Ministers to commence the provisions in the Bill (except for sections 6, 7 and 8, which will come into force the day after Royal Assent) and for that power to be subject to the laying requirement set out in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

8. The purpose of the Bill is—

‘to amend provisions of the Freedom of Information (Scotland) Act 2002 relating to the effect of various exemptions and the time limit for certain proceedings.’

Policy background

9. The Scottish Government’s ‘[Six Principles of Freedom of Information](#)’ (2007) set out its approach to Fol. One of these principles commits it to adjusting ‘the regime where it is necessary and sensible to do so’. The Bill seeks to fulfil this principle.

10. The [Freedom of Information \(Scotland\) Act 2002](#) provides a statutory right to access information held by Scottish public authorities such as the Parliament, local

authorities, NHS boards, Scottish Ministers. Generally speaking the information requested must be provided unless it falls under one or more of the exemptions within the Act. The Act also establishes the arrangements for enforcement and appeal.

11. The Bill seeks to address what the Scottish Government regards as 'weaknesses' in two areas of the Act and which can only be remedied by amendment under primary legislation. These relate to the inflexibility of the order-making powers (s59 of the Act) and the practical ineffectiveness of the offence provision (s65).

12. Sections 1-5 of the Bill amend provisions within the 2002 Act. To understand the effect and impact of these amendments, it is important to understand what the sections of the Act do. Below is an explanation of what each section in the Bill seeks to do along with a summary of key points raised in the Stage 1 written evidence. Points raised with the Bill team on [5 September 2012](#) are also highlighted.

Section 1 (Royal exemption)

13. Amends s2 of the Act. At present, if applying the exemption for 'information relating to communications with Her Majesty, with other members of the Royal Family, or with the Royal Household' the public interest in whether or not to release must also be considered. The 'public interest test' is in practice a balancing act requiring the public authority to weigh the arguments in favour of release against arguments in favour of withholding.

14. A limited number of exemptions are 'absolute' meaning the public interest does not need to be considered (s2 of the Act). The amendment proposes to make absolute those elements of the exemption relating to communications with Her Majesty, the Heir, and second in line to the Throne.

15. The purpose of the amendment is to ensure consistency of approach across the British Isles given the 'shared Monarchy' and in doing so ensure the maintenance of an appropriate level of confidentiality regarding such communications. To ensure absolute clarity, the amendment confirms that communications made or received on behalf of a particular member of the Royal Family are to be regarded as communications with that member.

16. The Scottish Government [consulted](#) on the Bill (December 2011) and published the [consultation responses](#) and its [report](#) alongside the Bill. Broadly there was overall support for the Bill and its intentions. A number of concerns were expressed on this particular issue. The then Scottish Information Commissioner (SIC) stated—

'However, I hold significant concerns in relation to the proposal to introduce an absolute exemption for aspects of section 41(a) (Communications with Her Majesty, etc). Absolute exemptions are not regarded as good practice, and I consider this measure to be unnecessary.

17. Similarly UNISON stated—

‘we are opposed to making communications with Her Majesty, the heir, the second in line, or the relevant member of the Royal Family subject to ‘absolute’ exemption, therefore not requiring the application of a public interest test. As Mr Dunion [the then SIC] pointed out, the effect of this proposal, combined with the proposed lifespan for the 41(a) exemption, would result in “an absolute exemption for information relating to communications, which would in some cases last for more than the current 30 years. There would be no prospect of a release before that time on public interest grounds, regardless of either the distance of the information from the actual content of communications, the nature and content of the information, or the weight of public interest which may exist in relation to its disclosure.”

18. The Scottish Government said in response that it considered it ‘appropriate’ to adopt the position taken by the UK Government. It considered it ‘vital to ensure that the monarch, as well as the heir and second in line, can operate according to established constitutional conventions’. It also considers that the proposed amendment is consistent with policy formulation at the time of the original legislation in considering it reasonable to take into account common interests. In areas where it was considered advisable to ensure cross-border co-operation, exemptions in the Scottish legislation were intended to be compatible with the relevant provisions in the UK legislation.

19. Further, it has highlighted the minimal number of requests made to Scottish Ministers where s41(a) of the Act (*Communications with Her Majesty etc and honours*) has relevance and the minimal number of applications made to the SIC for a decision. Moreover, the modification to this subsection relates only to the monarch, heir and second in line. The requirement to consider the public interest continues to apply in respect of communications with all other members of the Royal Family, as well as with the Royal Household (other than communications concerning the monarch, heir or second in line.)

20. The Committee will note that several responses to its Stage 1 call for evidence continue to highlight concerns about this matter. The ‘reservations’ of the SIC remain and a large part of that response is on this issue. The SIC states ‘it is disappointing that Ministers have chosen to retain the amendment’. The SIC makes an initial point about the number of consultation responses on this particular issue and details specific areas of concern i.e. that the—

- FOI Act currently contains appropriate protections
- proposed exemption will be extremely wide-ranging
- amendment will create a fresh inconsistency in the handling of requests under Scottish legislation
- amendment would be inconsistent with international good practice principles
- Westminster amendment was not subject to full scrutiny

21. Similarly the Campaign for Freedom of Information in Scotland (CFoIS) expressed concern in its response (support for this submission has been expressed by a number of organisations and individuals e.g. Alistair Sloan, UNISON Scotland, NUJ). It does not agree that the Scottish Government should have copied the UK Government.

22. The Commission for Ethical Standards in Public Life in Scotland considers this provision will likely increase the period records are exempt which seems contrary to s59(1) of the 2002 Act while Alistair Sloan considers the provision will ‘have an adverse effect on the rights of people’ under Fol.

23. There are expressions of ‘support’ for the provision. For example SNH accepts the Scottish Government’s position while the Scottish Council on Archives regards the stance of the Scottish Government as ‘wholly appropriate’.

24. At a local authority level, responses vary. Dumfries and Galloway Council is ‘comfortable’ while Highland Council finds the decision of the Scottish Government to be ‘disappointing’.

25. A further point made by the SIC in her written evidence on the Royal exemption proposal relates to the Environmental Information Regulations (EIRs)—

‘While the proposed amendment will make information that relates to communications with senior royals absolutely exempt from release under FOI, where those communications relate to the environment, the information may still be subject to disclosure in the public interest. This is inconsistent, could be confusing to both requesters and Scottish public authorities, and creates process inefficiencies at a time when funding to public authorities is being squeezed. The amendment will, therefore, create a fresh divergence for Scottish public authorities in the way requests for relevant information must be considered under the FOI Act and the EIRs.’

26. Further issues relating to the EIRs are highlighted below.

27. At its meeting on [5 September 2012](#) the Committee raised the Royal exemption issue with the Bill team.

28. The Convener highlighted the timing of when the Royal exemption amendment was brought forward to the House of Lords (col. 1471). In response, the Bill team stated that the consideration of the Bill by the Committee would allow for “ample opportunity” for scrutiny.

29. The Deputy Convener sought clarification (col. 1475) of why there must be consistency in the approach to this matter between the two Fol regimes. In response the Bill team said—

“Where it is considered advisable to ensure cross-border co-operation, exemptions in Scottish legislation are intended to be compatible with the relevant provisions in the UK freedom of information legislation. Ministers believe that the same argument applies to the commonality of the shared monarch”.

30. The Bill team also referred to the “unique position in British life” of the monarchy and the right to “counsel her ministers and her government”.

Section 2 (Refusal notice)

31. Amends s18 of the Act which allows an authority to respond to a request by ‘neither confirming nor denying’ whether information exists or is held if to reveal if information exists or is held would be against the public interest. However, such a response can only be issued if a limited number of exemptions could be applied. At present, the exemption relating to personal information is not one of these.

32. The purpose of the amendment is to provide additional protection for personal information. It also brings the Act into line with both the EIRs and UK Fol legislation.

33. The amendment was a suggestion of the former SIC in his [Special Report](#) to Parliament in January 2012.

34. The Committee will note from the Stage 1 responses the SIC considers this change to be one which will strengthen and enhance the 2002 Act. SEPA considers the amendment will ‘provide clarity’ while Highland Council Considers this ‘one of the most important proposed amendments’ as ‘that ability is in itself a protection of that personal data’. However, Alistair Sloan considers this amendment will ‘adversely affect the right to access information from public authorities’.

Section 3 (Accessible information)

35. Amends s25 of the Act. Where information is reasonably obtainable, for example, when it is already publicly available, it need not be provided to an applicant in response to a request. However, to be recognised as being ‘reasonably obtainable’ it should be available in accordance with an authority’s publication scheme (which sets out what information it proactively publishes). It has been noted that this section of the Act is not a ‘model of clarity’. While a 2009 Court of Session opinion provides assistance in interpretation, the amendment seeks to improve the Act by making clear that any information made available in line with an approved publication scheme is exempt and does not, therefore, need to be provided to the applicant.

36. The amendment was also a suggestion of the former SIC in his [Special Report](#).

37. The Committee will note from the Stage 1 responses the proposed amendment is supported by the Commission for Ethical Standards in Public Life in Scotland while SEPA considers the amendment provides ‘clarity’ as does the Chief Fire Officer Association (Scotland).

Section 4 (Historical periods)

38. Amends s59 of the Act. The order-making power at s59 can be used to reduce the lifespan of certain exemptions (those at s58 of the Act). The Scottish Government has previously consulted on reducing the lifespan of the ‘30-year’ exemptions to 15 years.

39. At present any reduction to the 30 year period could only be done in respect of all the relevant exemptions rather than individually. However, the Scottish Government’s consultation raised issues with particular exemptions, for example that concerning ‘confidentiality’, meaning a uniform reduction in lifespan was considered inadvisable. The amendment therefore allows for a more flexible approach with separate consideration for individual exemptions and types of record.

40. In due course it is the Scottish Government’s intention to bring forward an Order revising the lifespans of the ‘30-year’ exemptions to enable as much information to be placed in the public domain as early as practicably possible.

41. Concerns were expressed on this issue in responses to the Scottish Government [consultation](#). For example the Commission for Ethical Standards in Public Life stated—

‘We are concerned that the level of flexibility proposed will lead to a more complex and less accessible Freedom of Information system. We consider a set historical record period to be much preferable to the flexible approach outlined in the draft amendment. A set time period provides for clarity and consistency. Flexible powers could result in a far more complex system with different historical record periods for each exemption, for each sub-section of an exemption, for each type of record and for any other purpose not yet identified. Currently, there are three historical records periods (30, 60 and 100 years). Your initial proposals recommend increasing this to six (5, 15, 20, 30, 60 and 100 years). Introducing different periods for paper and electronic records could quickly lead to 12 different historical record periods. There is potential for there to be over 200.’

42. In response, the Scottish Government considered the proposed power to be ‘proportionate’ and that it provides public authorities flexibility in this area. It highlighted that the order to effect such changes will be subject to consultation and then affirmative procedure in the Parliament ensuring further comment and scrutiny. The then SIC stated in his consultation response—

‘I agree with the proposed amendment allowing greater flexibility in terms of the lifespan of exemptions. I also recognise and support the assertion in the consultation paper that FOISA has contributed to a shift in both public authority culture and public expectations, towards greater openness and accountability, and that this has led to the long lifespan for exemptions being increasingly out of step. In my response to the Scottish Government’s “Improving Openness” consultation in 2009’ I supported the proposals, put forward at that time, to reduce the lifespan of all eight exemptions contained in section 58(1) from 30

years to 15 years. It is clear, however, that concerns around the current "all or nothing" approach to the definition of a historical record (which means that currently any changes to this definition must apply equally to each exemption listed in section 58, with no room for flexibility) has frustrated the laying of an order under section 59(1).

While I supported the earlier proposal to reduce the lifespan of all exemptions contained in section 58(1) to 15 years, I acknowledge that the proposed amendment will serve to remove the barriers which may have prevented Ministers from laying an order under section 59(1) of FOISA. It is important to remember, of course, that most of the exemptions in question are subject to the public interest test, and that there will clearly be cases where it is appropriate for information falling within the scope of the exemptions to be released earlier, where the public interest in withholding the information is outweighed by that in release. These circumstances, will of course, continue to be addressed, both in public authorities' handling of the FOI requests they receive, and in the Commissioner's decisions on appeals.

The consultation paper does not make clear whether the reduction of the lifespan of exemptions would be fully retrospective, or whether it would only apply to records created after the Amendment Bill is introduced. In the interest of ensuring that the subsequent administration of FOI requests is as straightforward as possible, I would recommend that the amendment be made fully retrospective, so that it applies to all records held by authorities, regardless of their creation date. Such an approach would also be consistent with that taken following the Ministers' 2009 decision to make the bulk of the historic information held by the National Archives of Scotland available after 15 years. I would encourage Ministers to also consider making similar amendments to the Environmental Information (Scotland) Regulations 2004 (the EIRs) in order to introduce a lifespan for equivalent exceptions contained in the EIRs. As noted in my earlier response the "historical records" provisions in FOISA is not reflected in the EIRs. This means that exceptions can be cited in relation to information regardless of its age under the EIRs, while the equivalent exemptions in FOISA will fall away in relation to non-environmental information. I would recommend addressing this anomaly by amending the EIRs, in order to ensure consistent rights of access to the information covered by these two interrelated regimes.'

43. The Committee will note from the Stage 1 responses there is support for this amendment. For example, the Archives and Records Association 'supports the flexible approach set out in the Bill'. This point about flexibility is also highlighted by East Lothian, North Ayrshire and Highland councils. NHS Lanarkshire welcomes the proposal as does the Scottish Council on Archives (although it does highlight an issue around private archives) and Consumer Focus Scotland.

44. The SIC believes the Bill allows 'greater flexibility'. She does acknowledge the concerns expressed 'by a small number of respondents' (to the Scottish Government's consultation) but considers the positive impact of the amendment will 'alleviate many of these concerns'.

45. However, the Commission for Ethical Standards in Public Life in Scotland continues to express concern that ‘the level of flexibility proposed could result in a far more complex system with different historical periods for each exemption’.

46. At its meeting on [5 September 2012](#) the Convener raised this concern with the Bill team (cols. 1477-8). In response the Bill team stated “we feel that there will not be a significant increase in the level of complexity, and that any increase will be more than counterbalanced - in fact, outweighed - by the gain in the increased amount of information that will be made public”.

Section 5 (Time limit for proceedings)

47. Amends s65 of the Act. It is an offence under the Act to alter, deface, block, erase, destroy or conceal a record held by a public authority and subject to an information request, with intent to prevent disclosure. At present a prosecution must be brought within 6 months of the offence being committed. However, due to the timescales in the Act (20 working days to respond to a request, 40 working days for an applicant to ask for a review if dissatisfied, 20 working days to issue a review response, 6 months for an applicant to request the Information Commissioner investigates the handling of a request) it can be considerably more than 6 months before an offence comes to light.

48. The amendment therefore proposes to make this section fully effective by revising the time limit so that a prosecution can be commenced 6 months from when sufficient evidence of an offence comes to the knowledge of a prosecutor - with a ‘back stop’ of 3 years for a prosecution to be brought from the date of an offence.

49. The Committee will note the Law Society of Scotland is supportive of this amendment as is NHS Lanarkshire, the SIC, UNISON Scotland and Alistair Sloan.

50. In response to a question from the Convener on [5 September 2012](#) (col. 1472) about the number of times where it was not possible to prosecute (because of the six month time bar), the Bill team suggested that this be raised with the SIC in oral evidence.

Other issues raised in written evidence

51. The Committee will note that other issues have been highlighted in the written submissions. The issue which appears across a number of submissions e.g. the CFoIS (supported by others), South Lanarkshire Council, Consumer Focus Scotland, SCVO, UNISON Scotland and the STUC is that of FoI and public contracts to arm’s length organisations.

52. The issue has featured in Scottish Government consultations and a concern expressed is that the Bill does not address this matter (a ‘missed opportunity’ as Alistair Sloan states in his submission) and that the Scottish Government, having previously consulted on FoI (and this issue), has not stated whether (and if so when and on what)

it will bring forward proposals on this issue. Section 5 of the 2002 Act allows Ministers to bring forward an SSI to designate ‘public authorities’ e.g. persons providing under contract a service on the council’s behalf.

53. At its meeting on [5 September 2012](#) the Committee raised this issue with the Bill team. In response to a question from Elaine Murray (col. 1473), who gave an example of information from a housing department, the Bill team stated—

“Clearly, there are anomalies with the situation. However, the position of Scottish ministers is clear; we have consulted and a decision will be deferred until - this is a sequential issue - Parliament has considered the Freedom of Information (Amendment) (Scotland) Bill.

It is also important to place the matter in context. Extension is sometimes seen as a be-all and end-all, but there are other means of acquiring information from bodies that are not covered, and the wider transparency agenda is intended to cater for that. For example, “The Scottish Social Housing Charter” is opening up routes to information. That is not extension; it is another route through which to access information”.

54. Dr Murray also asked (col. 1473) about consultation on this issue and the Bill team referred to the amount of consultation which has been conducted by the Scottish Government. It also referred (cols. 1474-5) to the consultation launched on the Scottish Government’s Procurement Reform Bill which it considers offers a further opportunity “within the transparency agenda”. It also stated that there are already Fol clauses in contractual agreements, that the Public Records (Scotland) Act 2011 which increases access to information, and that this was all part of a “multistrand approach” of the Scottish Government to providing information.

55. The Deputy Convener also questioned the Bill team on this matter (col. 1476) and asked whether, as councils “hive off parts of themselves”, the amount of information which is covered by Fol then reduces. The Scottish Government, in response, stated that a “route to information should still exist” and that information “should still be available in the majority of cases through the commissioning public authorities”.

56. This issue was discussed further (col. 1477)—

“John Mason: What about, say, a contract between a council and the private sector that neither wants to let the public see?

Andrew Gunn: A council will be subject to the legislation, so if it holds a contract, the standard request process can be followed. If a council invokes exemptions, that is its right. The ultimate appeal is to the Scottish Information Commissioner.

John Mason: If a confidentiality agreement exists, the result of all that process is that we do not get access to the information. Surely the whole point is to make everything more transparent, is it not?

57. To assist the Committee on this issue the then Minister in charge of the Bill [wrote to the Convener](#) (copy attached).

58. A further issue raised is that of accessing environmental information. The issue was highlighted in the [Special Report](#) by the last SIC—

‘Authorities encounter difficulty with the relationship between the EIRs and FOISA. Practical measures could reduce the work involved in responding to a request under the EIRs, for example by amending the definition of “information” in section 73 of FOISA to expressly exclude environmental information. This would allow requests for environmental information to be dealt with solely under the EIRs instead of under both FOISA and the EIRs.’

59. This point is also made by South Lanarkshire Council which believes there is ‘confusion’ and an anomaly between two ‘information’ regimes and suggests that the Bill should remove environmental information from the definition of “information” contained in s73 of the 2002 Act.

60. At its meeting on [5 September 2012](#) the Convener sought clarification (col. 1471) on the differing regimes from the Bill team. In response the Bill team stated—

“It is partly a matter of the origins of the two different regimes. The Environmental Information (Scotland) Regulations 2004 implemented a European directive and - as you rightly note - include no protection for communications with the monarch. That protection exists, however, in the 2002 act, and we think that it is reasonable to ensure that the confidentiality of communications with the royal household is upheld through this legislation”.

Financial Memorandum

61. The Committee would normally consider the FM for each Bill and report accordingly to the lead committee. As it is the lead committee for this Bill it will consider the FM as part of its Stage 1 scrutiny and address any particular FM issues within its Stage 1 report.

62. The Scottish Government states in its FM that the changes set out in the Bill ‘will have no financial implications’ for the Scottish Administration, local authorities or for other bodies, individuals or businesses.

63. The Committee will note that, generally, there are no significant concerns expressed about the financial impact of the Bill. For example, Dumfries & Galloway, East Lothian, Highland and North Lanarkshire councils indicate no concerns while the Scottish Council on Archives considers the FM ‘has taken on board concerns about financial implications’. The SIC considers the assessment in the FM to be ‘reasonable and proportionate’.

64. There is perhaps a slight note of caution expressed, for example by UNISON Scotland which states the Committee 'should be concerned about the financial implications in reducing scrutiny of public spending – the effect of continuing to allow FOI rights to be eroded where public services are delivered by private companies and other bodies not covered by FOISA' and South Lanarkshire Council which believes that the Bill would not have any adverse financial effect on it 'although this would change if the general purposes of the changes were more than a technical nature'.

65. In response to a question from the Convener on [5 September 2012](#) (col. 1478) about the cost to the Scottish Government of dealing with information requests (para.29 of the FM) the Bill team has provided the following written response—

'The information referred to is already in the public domain and can be accessed at:

FOI costs report (from which the £236 figure is drawn)
www.scotland.gov.uk/About/Information/FOI/FOICostReport

FOI Annual report for 2011 which estimates (on the basis of the figures in the costs report) the total cost to the SG of responding to FOI. In 2011, the figure was £530,253
www.scotland.gov.uk/About/Information/FOI/Reporting/AnnualReport2011

For information, we're in the process of updating the cost report to reflect 2012 experience. We would expect to be able to publish this in advance of the Stage 1 debate.'

Policy Memorandum (PM)

66. The PM sets out the approach of the Scottish Government to consulting on the Bill and its policy intentions. The Committee, in its call for evidence, sought the views on this particular issue (Q2). A number of responses highlighted the Scottish Government's consultation on the Bill (and its previous consultations on matters which are not included in the Bill e.g. FOI/contracts and arms-length organisations).

67. The Archives and Records Association 'welcomes' the way its concerns have been addressed. The Commission for Ethical Standards in Public Life in Scotland states it 'is clear from the policy memorandum that our concerns were identified and considered.' Other responses who appear satisfied at the consultation process are Dumfries and Galloway Council, GTC Scotland, NHS Lanarkshire, North Lanarkshire Council and SCVO.

68. Consumer Focus Scotland is disappointed that the Scottish Government has not progressed a wider reform agenda and sought to extend the coverage of FOISA and bring more organisations within the scope of the legislation. The CFoIS considers its 'views have been mainly ignored'.

69. The Committee may wish to raise the approach taken by the Scottish Government to consulting on the Bill and how and why it reached the conclusions it did.

70. The PM also assesses the impact of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and other relevant matters.

71. With regards equal opportunities, BEMIS, 'broadly speaking is supportive of the Bill' but is 'disappointed that the Scottish Government seems not to have provided an Equality Impact Assessment in relation to the Bill'.

72. With regards human rights, the STUC raises a specific concern in its submission.

Conclusion

73. **The Committee is invited to note the above.**

**Fergus D. Cochrane
Senior Assistant Clerk to the Committee**