



The Scottish Parliament
Pàrlamaid na h-Alba

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

SPICe Briefing

Pàipear-ullachaidh SPICe

Freedom of Information Reform (Scotland) Bill

Courtney Aitken

The Freedom of Information Reform (Scotland) Bill was introduced to the Scottish Parliament on 2 June 2025 by Katy Clark MSP. The Bill proposes reform to the Freedom of Information (Scotland) Act 2002. This briefing provides background to the Bill and summarises some of the key proposals within the Bill, as introduced.



1 September 2025
SB 25-35

Contents

| | |
|--|-----------|
| Summary | 3 |
| Freedom of information in Scotland | 5 |
| Background on reform of the Freedom of Information (Scotland) Act | 6 |
| The Bill | 8 |
| Purpose of the Bill | 8 |
| The Bill's provisions | 8 |
| Access to information held by Scottish public authorities | 9 |
| General entitlement | 9 |
| Further powers to designate Scottish public authorities | 9 |
| Publicly-owned companies | 11 |
| Public authorities to which FOISA has limited application | 11 |
| Reports on the section 5 power to designate new public authorities | 11 |
| Requesting information | 12 |
| Time for compliance | 12 |
| Publication schemes and model publication schemes | 13 |
| Exempt information | 14 |
| The Scottish Information Commissioner | 15 |
| Enforcement | 16 |
| Section 48(a) and appeals about the handling of information requests by the Scottish Information Commissioner | 16 |
| Enforcement notices | 18 |
| Repeal of the First Minister's "veto" | 19 |
| Failure to comply with a notice issued by the Scottish Information Commissioner under section 53 | 20 |
| Codes of practice | 21 |
| Proactive publication duty and publication code | 21 |
| Freedom of information officer | 22 |
| Miscellaneous and supplemental | 23 |
| Disclosure of information to Scottish Public Services Ombudsman, Information Commissioner or to Audit Scotland | 24 |
| Offence of altering records with intent to prevent disclosure | 24 |
| Final provisions | 25 |
| Bibliography | 27 |

Summary

The Freedom of Information (Scotland) Act 2002 (FOISA) grants individuals the right to access recorded information held by Scottish public authorities. Under FOISA, public authorities must disclose requested information unless specific conditions or exemptions apply.

Policy background and supplementary reference material

A detailed account of freedom of information law and policy in Scotland can be found in the SPICe briefing, [The right to know: freedom of information in Scotland](#). This briefing explains the provisions of FOISA and outlines the key features of Scotland's freedom of information regime, including the Environmental Information (Scotland) Regulations 2004. The detailed briefing serves as both a preamble to and companion for this Bill briefing.

Katy Clark MSP introduced the Freedom of Information Reform (Scotland) Bill on 2 June 2025. The Bill aims to address recommendations made by the Session 5 Public Audit and Post-legislative Scrutiny Committee following its post-legislative scrutiny inquiry into the operation and effectiveness of FOISA. The Bill comprises 23 sections and includes provisions to:

- Introduce a presumption in favour of disclosure when exemptions are being considered by public authorities.
- Require Scottish Ministers to consider recommendations from the Scottish Information Commissioner on designating new bodies under FOISA, and give the Scottish Parliament power to designate organisations delivering public functions or services by resolution.
- Extend FOISA to publicly-owned companies that are jointly owned by the Scottish Ministers and another public authority.
- Make changes to the requirements for reports on the 'section 5 powers' and require the Scottish Parliament to debate any section 5 report.
- Clarify that freedom of information requests can include an electronic address for correspondence.
- Pause, rather than reset, the 20-working day response clock when seeking clarification.
- Repeal the publication scheme duty.
- Create a new exemption for information provided to the Scottish Information Commissioner for the purpose of investigating appeals.
- Provide the Scottish Information Commissioner with the power to require information from individuals acting on behalf of public authorities.
- Enable the Scottish Information Commissioner to investigate appeals on its handling

of information requests made to the Office of the Scottish Information Commissioner.

- Allow the Scottish Information Commissioner to issue enforcement notices where there is non-compliance with FOISA codes of practice.
- Remove the First Minister's "veto" power.
- Allow the Scottish Information Commissioner to refer cases of failure to comply with the timescales in decision notices to the Court of Session.
- Introduce a proactive publication duty supported by a code of practice.
- Require all public authorities to designate a Freedom of Information Officer.
- Allow the Scottish Information Commissioner to disclose certain information to Audit Scotland.
- Create an offence where information is destroyed with intent to prevent disclosure, even if no information request has been made.
- Extend the time limit for prosecuting the offence of deliberately destroying or concealing records.

Freedom of information in Scotland

The [Freedom of Information \(Scotland\) Act 2002 \(FOISA\)](#) came into force on 1 January 2005. FOISA gives a right of access to recorded information.¹ Under FOISA a person who requests information from a public authority in Scotland is entitled to be given the information, subject to some conditions and exemptions.¹ Exempt information is set out in Part 2 of FOISA.¹ The [Scottish Information Commissioner \(SIC\)](#) is an independent public official responsible for enforcing and promoting FOISA.² The powers and duties of the Scottish Information Commissioner are provided for by Parts 3 and 4 of FOISA.¹

FOISA also enabled Scottish Ministers to make the [Environmental Information \(Scotland\) Regulations 2004 \(the EIRs\)](#) which provide a regime to access environmental information.³

Policy background and supplementary reference material

A detailed account of freedom of information law and policy in Scotland can be found in the SPICe briefing, [The right to know: freedom of information in Scotland](#). This briefing explains the provisions of FOISA and outlines the key features of Scotland's freedom of information regime, including the Environmental Information (Scotland) Regulations 2004. The detailed briefing serves as both a preamble to and companion for this Bill briefing.

Shortcuts to relevant chapters

- [Freedom of Information \(Scotland\) Act 2002](#)
- [Environmental Information \(Scotland\) Regulations 2004](#)
- [Freedom of Information \(Amendment\) \(Scotland\) Act 2013](#)
- [New public bodies designated under the Freedom of Information \(Scotland\) Act 2002](#)
- [Freedom of information during the COVID-19 pandemic](#)
- [Post-legislative scrutiny of the Freedom of Information \(Scotland\) Act 2002](#)
- [Consultations on freedom of information reform](#)
- [What's next for freedom of information reform?](#)

Background on reform of the Freedom of Information (Scotland) Act

Since FOISA came into force, discussion over its reform has centred on widening organisations and bodies covered by the Act to reflect evolving models of public service delivery.⁴ Several consultations have explored to some extent how private and third-sector bodies that receive public funding and deliver public services could be subject to FOISA's requirements.⁴ Despite these discussions, the only primary legislation to reform FOISA remains the [Freedom of Information \(Amendment\) \(Scotland\) Act 2013](#), which—according to its Policy Memorandum—intended to make "limited" modifications to improve the operation of FOISA. Following that Amendment Act, FOISA's coverage was extended by statutory order on three occasions.⁴

The [Session 5 Public Audit and Post-legislative Scrutiny \(PAPLS\) Committee](#) undertook a post-legislative scrutiny inquiry into the operation and impact of FOISA.⁵ The inquiry concluded in May 2020 with the publication of a report and recommendations.⁵ The PAPLS Committee concluded that while FOISA had significantly improved the transparency and accountability of public authorities, it needed updates to address the evolving nature of public service delivery and communication methods.⁵ Alongside specific recommendations for the Scottish Government to consider, the PAPLS Committee report recommended the Scottish Government undertake a formal consultation on reform.⁵ This recommendation was subsequently endorsed by the Scottish Government in its response to the PAPLS Committee (dated February 2021).⁶

In January 2022, early in Session 6, the [Campaign for Freedom of Information in Scotland](#) (an independent group advocating public access to official information) published a draft Bill and accompanying explanatory notes proposing reforms to FOISA.⁷ This draft Bill was later converted into a draft consultation for an MSP to adopt.⁷ Katy Clark MSP subsequently lodged the draft proposal and consultation for a Freedom of Information Reform (Scotland) Bill (a Member's Bill) on 1 November 2022 (before the Scottish Government launched its consultation on 29 November 2022).⁸

The consultations ran concurrently and both closed on 14 March 2023.^{8 9} The Scottish Government published an analysis of its consultation on 30 June 2023 and provided its response to the consultation on 28 November 2023.^{10 11} In its response to the consultation, the Scottish Government indicated that it would not be introducing primary legislation to reform FOISA during Session 6.¹¹ The Scottish Government later announced a series of non-legislative workstreams on freedom of information policy on 22 June 2024, including one which would include consideration of how FOISA could be extended to care homes.¹²

The analysis and response to the consultation on Katy Clark MSP's proposal for a Freedom of Information Reform (Scotland) Bill was published on 7 December 2023.¹³ Katy Clark MSP subsequently secured the right to introduce the proposed Bill.^{8 i}

i The process that must be followed in order to propose and secure the right to introduce a Members Bill is provided for by

Policy background and supplementary reference material

The SPICe briefing, [The right to know: freedom of information in Scotland](#), provides a detailed summary of the post-legislative scrutiny of FOISA during Session 5 and the consultations on freedom of information reform which followed. The briefing serves as both a preamble to and companion for this Bill briefing.

Shortcuts to relevant chapters

- [Post-legislative scrutiny of the Freedom of Information \(Scotland\) Act](#)
- [Scottish Government consultation on freedom of information](#)
- [The proposed Freedom of Information Reform Bill](#)
- [What's next for freedom of information reform?](#)

Rule 9.14 of the Standing Orders of the Scottish Parliament. ¹⁴ This process is explained in a [SPICe briefing on the Scottish Parliament \(Recall and Removal of Members\) Bill](#).

The Bill

The [Freedom of Information Reform \(Scotland\) Bill](#) was introduced by Katy Clark MSP on 2 June 2025 to give effect to the [proposal first lodged in November 2022](#).¹⁵

Documents published alongside the Bill at introduction include [Explanatory Notes](#), a [Policy Memorandum](#), [Financial Memorandum](#), [Delegated Powers Memorandum](#) and [Statements on Legislative Competence](#)¹⁵.

Purpose of the Bill

The Policy Memorandum to the Bill notes that methods of information management and public service delivery have changed significantly since FOISA came into force on 1 January 2005.¹⁶ The aim of the proposed legislation, as set out in the Policy Memorandum, is to ensure that FOISA's underlying policy goal of open and accountable governance remains effective in a contemporary context.¹⁶ The Member also asserts in the Policy Memorandum that the Bill fulfils the outstanding recommendations of the Session 5 PAPLS Committee report, which called for an expanded range of bodies to be covered by FOISA and a significant shift towards proactive publication of official information.¹⁶ The Policy Memorandum further states:

“ The main aim of the Bill is to improve transparency in Scotland by strengthening existing measures in the Freedom of Information (Scotland) Act 2002 (“Fol Act”). The Bill strengthens the public’s right to information by explicitly stating the right to receive the information unless it is subject to an absolute exemption, introduces a new mechanism by which additional bodies may be designated under the Fol Act and requires pro-active publication of information through a new duty to publish. The Bill improves compliance with the Fol Act by requiring an FOI officer to be designated in each public authority and strengthens the enforcement powers of the independent, Scottish Information Commissioner (“the Commissioner”).”

The Scottish Parliament, 2025¹⁶

The Bill's provisions

The Bill comprises 23 sections and is structured in 7 parts:

- [Access to information held by Scottish public authorities](#)
- [Exempt information](#)
- [The Scottish Information Commissioner](#)
- [Enforcement](#)
- [Codes of practice](#)
- [Miscellaneous and supplemental](#)

- [Final provisions.](#)

Access to information held by Scottish public authorities

This section covers the following provisions of the Bill:

- [General entitlement](#)
- [Further powers to designation Scottish public authorities](#)
- [Publicly-owned companies](#)
- [Public authorities to which FOISA has limited application](#)
- [Reports on section 5 power](#)
- [Requesting information](#)
- [Time for compliance](#)
- [Publication schemes and model publication schemes.](#)

General entitlement

Section 1 of FOISA, known as the the general entitlement, grants people the right to access information held by Scottish public authorities. ¹ During the Session 5 PAPLS Committee inquiry, the Scottish Information Commissioner proposed a technical amendment to FOISA which would have the effect of adding a requirement that exemptions are read in a restrictive way, to complement the default position that information should be disclosed under FOISA. ¹⁷ There is a similar provision in the EIRs.ⁱⁱ

Section 1 of the Bill proposes an amendment to the general entitlement to insert a presumption in favour of disclosure after section 1(5) of FOISA. ¹⁸ The insertion states:

“(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.”

The Scottish Parliament, 2025¹⁵

This means that when a public authority is deciding whether to withhold information under a qualified exemption in Part 2 of FOISA, it must begin from the position that the information should be disclosed. ¹⁸

Further powers to designate Scottish public authorities

An information request under FOISA can be made to a "Scottish public authority", as defined in section 3(1) of the Act. ¹ This term refers to any body, officeholder, or other

ii Regulation 10(2) of the EIRs clarifies that in considering the application of an exception (how exemptions are known in the EIRs), the public authority should interpret the exceptions in a restrictive way and apply a presumption in favour of disclosure.

person that meets one of the following criteria: ¹

- is listed in [schedule 1 of FOISA](#)
- is designated by order under [section 5\(1\) of FOISA](#)
- is classified as a publicly-owned company, as defined in [section 6 of FOISA](#).

Further information on public authorities under FOISA is provided in the SPICe briefing, [The right to know: freedom of information in Scotland](#).

FOISA provides for Scottish Ministers to designate bodies as public authorities if they are not listed in schedule 1 and cannot be added to it using a power provided for by [section 4\(1\) of FOISA](#). ¹ These bodies must either appear to exercise functions of a public nature or provide services under a contract to a Scottish public authority (where the provision of those services is a function of that public authority). ¹ This designation is done using an order-making power provided for by section 5(1) of FOISA. ¹ Section 7A of FOISA requires Scottish Ministers to report to the Parliament every two years on the use of the section 5 power. ¹

Further information on the procedure for designating a new public authority using the section 5 power and the instances the power has been used can be found in the SPICe briefing, [The right to know: freedom of information in Scotland](#).

The Session 5 PAPLS Committee concluded in its inquiry report that there was a general view that FOISA had failed to keep pace with the changing nature of public service delivery in Scotland. ⁵ A summary of the Session 5 PAPLS Committee scrutiny of who is covered by FOISA is included in the SPICe briefing, [The right to know: freedom of information in Scotland](#).

Section 2 of the Bill makes two proposals to provide "a proportionate approach to designation". ¹⁶

Section 2(1) of the Bill amends section 5 of FOISA to require Scottish Ministers to consider any proposals that have been made by the Scottish Information Commissioner under section 43(4) of FOISA when deciding to bring forward a designation order. ¹⁵ Section 43(4) of FOISA provides that the Scottish Information Commissioner may make recommendations to the Scottish Ministers regarding bodies which could be included within the scope of FOISA. ¹

Section 2(b) of the Bill introduces a new power for the Scottish Parliament to add bodies to schedule 1 as public authorities under FOISA by parliamentary resolution. ¹ This power is limited in scope to bodies that Scottish Ministers can already designate under their existing order-making powers in sections 4 and 5 of FOISA. ¹⁵ Parliament may designate specific individuals or organisations, or groups falling within a defined category. ¹⁵ Where a body is designated for exercising functions of a public nature, the resolution must specify those functions. ¹⁵ Similarly, if a body is designated due to providing a service under contract with a public authority, the specific service must be identified. ¹⁵ Before passing such a resolution, the Parliament is required to consult with the affected bodies or their representatives, as well as any other individuals or organisations it considers appropriate.

¹⁵ This consultation must be carried out by a committee or sub-committee of the Parliament. ¹⁵ The amendments also provide that the resolution is to be treated in the same way as a Scottish Statutory Instrument. ¹⁵

Publicly-owned companies

Publicly-owned companies are defined in section 6 of FOISA. ¹ A company is a publicly-owned company subject to FOISA if it is "wholly owned" by Scottish Ministers or by one or more other public authorities listed in schedule 1. ¹ Further information on publicly-owned companies under FOISA can be found in the SPICe briefing, [The right to know: freedom of information in Scotland](#).

The definition as drafted excludes companies that are jointly owned by Scottish Ministers *and* other public authorities. This was raised by the Scottish Information Commissioner during the Session 5 PAPLS Committee inquiry. ⁵ Section 3 of the Bill amends section 6 of FOISA to state that a company is a publicly-owned company for the purposes of FOISA if it is wholly owned by Scottish Ministers and any other public authority listed in schedule 1 of FOISA. ¹⁵

Public authorities to which FOISA has limited application

Section 4 of the Bill makes a technical amendment to ensure that any public authority designated by the Parliament using the proposed powers in [section 2\(2\) of the Bill](#) is only liable under FOISA in relation to information of a specified description that relates to its public functions ¹⁵. These amendments would be inserted into FOISA as section 7(3) of the Act. ¹⁵ The objective of the amendment is to "separate information held by a public authority for the delivery of its public functions from the 'private' information held". ¹⁶

Reports on the section 5 power to designate new public authorities

As discussed in [Further powers to designate Scottish public authorities](#), section 7A of FOISA requires that Scottish Ministers report on their use of the section 5 order-making power every 2 years. The section 7A reports must state:

- whether the section 5 power has been exercised during the reporting period
- an explanation of how the power has been exercised and if it has been used, why
- if it has not been used, the reason for the power not being exercised. ⁴

The section 7A report may also:

- summarise any response to consultations on extending FOISA coverage using the section 5 power during the reporting period
- indicate any intentions to exercise the power in the future

- include any other information that Scottish Ministers consider appropriate.⁴

The Member states in the Policy Memorandum to the Bill that this reporting duty (inserted into FOISA by the Freedom of Information (Amendment) (Scotland) Act 2013) "has failed to speed up the process of designation".¹⁶ Section 5(a) of the Bill proposes amending section 7A of FOISA to require Scottish Ministers to consider the exercise of the section 5 power before complying with the reporting duty.¹⁵ Section 5(b) of the Bill further requires the Parliament, within twenty sitting days of the report being laid, to debate and vote on whether to approve the report.¹⁵ The Policy Memorandum to the Bill sets out the Member's rationale and policy objectives for the amendments, and states:

" 52. Currently the report is a factual account of whether there has been a consultation and if there have been any designations. This has led to reports, including the last two in 2021 and 2023, stating that no new designations have been undertaken."

" 53. A policy objective is that the scrutiny role of Parliament is enhanced as the Scottish Ministers' report must be debated by Parliament, within one month of the report being laid, and MSPs will vote on whether to approve the report."

" 54. The Member anticipates that individually and collectively, these provisions will incentivise Scottish Ministers to regularly use their section 5 powers and at a pace which enables the system of independent regulation to operate effectively."

The Scottish Parliament, 2025¹⁶

Requesting information

Information requesters do not have to cite FOISA in submitting an information request.⁴ A request is valid, in accordance with section 8 of FOISA, if it:

- is in a recordable format that can be retained for future reference (e.g., letter, email, voice recording)
- includes the applicant's full name
- provides a correspondence address
- clearly describes the information being sought.⁴

Section 6 of the Bill proposes a technical amendment to clarify that the correspondence address provided by the information requester can include an electronic address.¹⁸ The Policy Memorandum to the Bill indicates that this will improve the accessibility of the freedom of information regime for information requesters and public authorities who prefer a "digital first approach".¹⁶

Time for compliance

Public authorities are required under section 10(1) of FOISA to comply with the information request "promptly" and have a maximum of 20 working days to respond.⁴ The twenty

working day deadline "resets" back to zero when public authorities ask for reasonable clarification on an unclear request and does not "restart" until the public authority receives a clear request.⁴

The PAPLS Committee recommended that the Scottish Government consider a "pause the clock" mechanism in its consultation on legislative changes after witnesses to the inquiry raised concerns that the arrangement incentivised delaying disclosure of official information.⁵ Katy Clark MSP also consulted on the time for compliance provisions.⁸ Respondents to both consultations supported the proposal to use a "pause the clock" mechanism when clarification is sought by the public authority.^{10 13}

Section 7(1) of the Bill implements this arrangement by amending section 10(1) of FOISA.¹⁵ The amendments clarify that where a Scottish public authority seeks further information from the requester in order to clarify the request, the 20 working day deadline for responding does not restart entirely.¹⁸ Instead, the clock is effectively paused: the period between the authority asking for clarification and receiving it is excluded from the calculation of the statutory time limit.¹⁸

Section 7(2) of the Bill proposes repealing the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016, which extend the response time for grant-aided schools and independent special schools to account for the impact of school holiday periods.¹⁵ The Member states their rationale for this repeal in the Policy Memorandum to the Bill:

" The Member's view is that not all amendments to the FOI Act made in recent years have been progressive. The Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 effectively introduced a new special provision which allowed grant-aided schools and independent special schools to take up to 60 working days to respond to FOI requests. The regulation was opposed by the Children and Young People's Commissioner Scotland. The Member believes the Regulations creates inequalities in rights and duties and should be repealed."

The Scottish Parliament, 2025¹⁶

Publication schemes and model publication schemes

Under section 23 of FOISA, public authorities are required to publish information proactively through a "publication scheme". This scheme sets out the classes of information the authority holds and how that information is made available to the public.¹ Section 24 of FOISA allows the development of a model publication scheme which can then be adopted by public authorities.¹ Section 25 of FOISA exempts information from disclosure if it is already reasonably accessible without the need to make an information request and section 25(3)(a)(ii) clarifies this exemption would apply to information that is available through the public authority's publication scheme.¹ Further background on this duty and the broader issue of proactive publication is provided in the SPICe briefing [The right to know: freedom of information in Scotland](#).

Since 2017, the Scottish Information Commissioner has advocated reform of this duty.¹⁶ In a special report titled [Proactive Publication: Time for a Rethink?](#), then Commissioner

Rosemary Agnew called for a shift away from the existing publication scheme model.¹⁹ During the Session 5 inquiry by the PAPLS Committee, the Scottish Information Commissioner proposed replacing the publication scheme duty with a duty to publish information, supported by a statutory code of practice.⁵ This proposal was subsequently consulted on by both the Scottish Government and Katy Clark MSP. Responses to both consultations showed broad support for replacing the current publication scheme duty with a more robust publication duty underpinned by a code of practice issued by the Scottish Information Commissioner.^{10 13}

Section 8 of the Bill proposes the repeal of the sections in FOISA providing for the publication scheme duty and model publication scheme (i.e., section 23, 24, 25(3)(a)(ii), and section 73).¹⁵ The implementation of the new duty to publish an accompanying code of practice is provided for by section 15 of the Bill (see [Codes of practice](#)).

Exempt information

Under FOISA, any person who requests information from a Scottish public authority is entitled to receive it, provided the information is recorded and no exemption applies.⁴ Exemptions, which may limit the right of access, are set out in Part 2 of FOISA (sections 25 to 41).¹ If an individual is dissatisfied with the way a public authority has handled their freedom of information request, such as not receiving a response or being unhappy with the outcome of a review, they do not have the option to take legal action directly through the courts.⁴ Instead, they can appeal to the Scottish Information Commissioner, who is responsible for independently investigating complaints and ensuring compliance with FOISA.⁴

Section 9 of the Bill proposes a new exemption (to be inserted into FOISA as section 41A) for information provided to the Scottish Information Commissioner in the course of investigating appeals. This exemption was originally proposed by the Scottish Information Commissioner in written evidence submitted to the Session 5 PAPLS Committee.⁴ The PAPLS Committee subsequently recommended that the Scottish Government consult on the proposal.⁵ Following this recommendation, the Scottish Government conducted a public consultation, in which a majority of respondents expressed support for the introduction of the exemption.¹⁰ The Scottish Information Commissioner reaffirmed the need for the exemption and elaborated on the policy rationale in its response to the Member's consultation on a proposed Freedom of Information Reform (Scotland) Bill, stating:

“ Section 45 of FOISA provides that the Commissioner and his staff must not disclose any information which has been obtained by him under or for the purposes of FOISA if the information is not already in the public domain, unless the disclosure is made with lawful authority. This might include submissions or information the authority has withheld because it believes the information to be subject to an exemption from disclosure. Section 45 also provides that to knowingly or recklessly disclose such information is a criminal offence.”

“ It is clearly the intent of section 45 to prevent the disclosure of such information. However, there is no statutory prohibition against disclosure of this information. Section 26 of FOISA says that information is exempt if its disclosure by a Scottish public authority otherwise than under this Act is prohibited by or under an enactment, so does not allow a prohibition within FOISA to be treated as an exemption.”

“ In the event of receiving a request for such information, the Commissioner has to rely on other exemptions, e.g. section 30(c) which relates to prejudice to the effective conduct of public affairs: given the provisions of section 45, it would clearly not be within the expectations of public authorities providing information and submissions to the Commissioner that these would be released into the public domain, and there is a very real likelihood that if authorities expected that the Commissioner might disclose information they would not provide it in the first place. The Commissioner’s investigation function is dependent on gathering evidence and submissions, so the impact would be to prejudice substantially the very function and purpose of determining appeals under FOISA.”

“ The absence of a statutory prohibition on disclosure which would allow the Commissioner to rely on section 26 of FOISA is understood to have been due to a drafting omission. [...]”

“ Given the terms of section 45 of FOISA, it is clear that it was the intention of Parliament that such information should be prohibited from disclosure, and an exemption which specifically relates to information which has been obtained by the Commissioner under or for the purposes of FOISA should be created to remedy this oversight.”

Scottish Information Commissioner, 2022²⁰

The Policy Memorandum accompanying the Bill quotes directly from the Scottish Information Commissioner’s response to the Member’s consultation. ¹⁶ It also records the Member’s agreement with the view that the absence of such an exemption in the original legislation was likely the result of a drafting oversight. ¹⁶

As noted elsewhere in this briefing, exemptions under FOISA are either absolute or qualified. Absolute exemptions are listed in section 2 of FOISA and do not require the application of the public interest test. In contrast, qualified exemptions are subject to a public interest test, meaning that even if the exemption applies, the information must still be disclosed unless the public interest in withholding it outweighs the public interest in disclosure. The Bill, as introduced, does not propose any amendments to section 2 of FOISA to designate the new exemption proposed in section 9 of the Bill as absolute. Therefore, the exemption would be treated as a qualified exemption, and any decision to withhold information under it would be subject to the public interest test.

The Scottish Information Commissioner

The [Scottish Information Commissioner](#) is responsible for enforcing and promoting FOISA.

² The powers and duties of the Scottish Information Commissioner are provided for by Parts 3 and 4 of FOISA. ¹

Section 10 of the Bill proposes an amendment to section 43 of FOISA, which sets out the

general functions of the Scottish Information Commissioner.¹⁵ The amendment would give the Scottish Information Commissioner the power to require individuals acting on behalf of Scottish public authorities to provide information where it is necessary for its performance of specific statutory functions.¹⁸ These statutory functions are:

- issuing a [practice recommendation](#) under section 44 of FOISA,
- handling an [application for review](#) under section 49 of FOISA,
- issuing an [information notice](#) under section 50 of FOISA, and
- issuing an [enforcement notice](#) under section 51 of FOISA.

The Policy Memorandum to the Bill states:

“ The Member is persuaded that this amendment is required to enable the Commissioner to perform their functions. The policy intent is to ensure that the Commissioner has access to all the information held by an organisation and to directly ask all relevant persons questions pertinent to the fulfilment of the regulatory and enforcement functions. By enabling the Commissioner to “require” engagement, a clear message is sent about the importance of co-operation with the Commissioner and their staff.”

The Scottish Parliament, 2025¹⁶

Enforcement

This section covers the following provisions of the Bill:

- [Section 48\(a\) and appeals about the handling of information requests by the Scottish Information Commissioner](#)
- [Enforcement notices](#)
- [Repeal of the First Minister's "veto"](#)
- [Failure to comply with a notice issued by the Scottish Information Commissioner under section 53.](#)

Section 48(a) and appeals about the handling of information requests by the Scottish Information Commissioner

Section 48 of FOISA provides that the Scottish Information Commissioner is not able to investigate appeals about the handling of information requests by the Scottish Information Commissioner, a Procurator Fiscal, or the Lord Advocate (in the Lord Advocate's capacity as head of the criminal prosecution and investigation of deaths in Scotland).¹ This means that the information requester's request for a review of the public authority's decision on the disclosure of information is the last line of appeal under FOISA in these cases.⁴ As information requesters in these circumstances cannot appeal to the Scottish Information Commissioner, they also cannot then appeal to the Court of Session under FOISA on a point of law.⁴

There is no equivalent provision of section 48 in the UK Freedom of Information Act 2000.

⁴ The UK Information Commissioner can investigate appeals which relate to the handling of freedom of information requests to its office. ²¹ This has resulted in decisions by the UK Information Commissioner in which the Commissioner has upheld the complaint against the Information Commissioner's Office. ²¹ The UK Information Commissioner's Office can also investigate and issue decisions in respect of the Crown Prosecution Service.

The Policy Memorandum to the Freedom of Information (Scotland) Bill which accompanied the Bill when it was introduced on 27 September 2001 explained that the then Scottish Executive did not consider it appropriate for the Scottish Information Commissioner to investigate appeals relating to information requests to its own office. ²² In respect of appeals relating to the handling of information requests by a Procurator Fiscal or the Lord Advocate, the Policy Memorandum to the Freedom of Information (Scotland) Bill states:

“ 115. Under section 48 of the Scotland Act 1998, any decision taken by the Lord Advocate, as head of the systems of criminal prosecution and investigations of deaths in Scotland, is to be “taken by him independently of any other person”. Consequently, it would not have been competent for the Bill to provide the Commissioner with powers to require disclosure of information held by the Lord Advocate – decisions as to the disclosure of information held by the Lord Advocate, as head of the systems of criminal prosecution and investigation of deaths in Scotland, can only be taken by the Lord Advocate. For example, the Scottish Parliament is itself precluded from requiring the production of any documents relating to the operation of the systems of criminal prosecution (section 27(3) of the Scotland Act).”

“ 116. Neither were Ministers persuaded that it would have been appropriate, had it been competent, to give the Commissioner powers to require disclosure by the Lord Advocate. Ministers considered it vital that the Bill did not undermine the effectiveness of law enforcement or undermine public confidence in the criminal justice system. Information is currently made available to the prosecuting authorities on the understanding that it is confidential and is to be used solely for the purpose of a trial. There is a real concern that witnesses and victims may be deterred from providing information to the law enforcement agencies, if there is a possibility that such information (including their identity) could be disclosed in future. Premature disclosure of information of this nature can be particularly damaging, affecting, for example, the right of the accused to a fair trial or prejudicing the safety of witnesses and victims. Of course, these issues apply equally to information held by procurators fiscal.”

The Scottish Parliament, 2001²²

The Scottish Information Commissioner in its written submission to the Session 5 PAPLS Committee suggested removing section 48 prohibitions against appeals being made against the Crown Office and Procurator Fiscal Service and the Scottish Information Commissioner. ¹⁷ The Commissioner noted that only a small number of appeals have been excluded by section 48. In addition, the Scottish Information Commissioner stated in written evidence to the PAPLS Committee:

“ 48. I do not consider that section 48 of the Scotland Act 1998 would necessarily preclude a right to make an appeal regarding the handling of an FOI request by the Lord Advocate. When making a decision about whether to release information under FOISA, it does not appear that the Lord Advocate is acting in any special capacity relating to prosecutions or the investigation of deaths in Scotland. Rather, he is carrying out his duties under FOISA in the same capacity as any other public authority.”

“ 49. Section 48 also prohibits appeals concerning the Commissioner and I suggest this is also unnecessary. Although at first it may seem strange for a regulator to regulate its own compliance with legislation, it is what happens elsewhere in the UK: the ICO investigates appeals about its own handling of requests. If my office were to do the same, requesters would have the right to appeal my decisions to the Court of Session on a point of law. Currently, that option does not exist for people who make requests to my office. If they are dissatisfied at the end of the review process, they can only resort to judicial review proceedings.”

The Scottish Parliament, 2019¹⁷

The repeal of the section 48 prohibitions was subsequently included in the consultations by the Scottish Government and Katy Clark MSP.⁴ In the consultation document on the Proposed Freedom of Information Reform (Scotland) Bill, Katy Clark MSP indicated that the repeal of section 48 would "provide consistency in enforceable rights across reserved and devolved FoI rights".⁸ The subsequent analysis of the consultation on the Proposed Freedom of Information Reform (Scotland) Bill cited one response in favour of the repeal of section 48 of FOISA but did not provide a suggestion of broader views on the issue.¹³ A majority of respondents to the respective question in the Scottish Government consultation were supportive of the repeal of section 48.¹⁰

Section 11 of the Bill proposes repealing section 48(a) of FOISA, which prevents the Scottish Information Commissioner investigating the handling of information requests by its own office.¹⁵ The Bill, as introduced, does not provide for the repeal of sections 48(b) and (c) which prevent the Scottish Information Commissioner from investigating the handling of appeals about the handling of information requests by a Procurator Fiscal or the Lord Advocate (in the Lord Advocate's capacity as head of the criminal prosecution and investigation of deaths in Scotland). The documents accompanying the Bill do not state why repeal of sections 48(b) and (c) were not included in the Bill.

Enforcement notices

Katy Clark MSP proposed in the consultation document on the Proposed Freedom of Information Reform (Scotland) Bill that the scope of enforcement notices issued under FOISA should be extended from failures to comply with Part 1 of FOISA to include failures to follow Codes of Practice issued under FOISA.⁸ This followed a suggestion from the Scottish Information Commissioner provided in written evidence to the Session 5 PAPLS Committee.¹⁷ The Scottish Information Commissioner stated:

“ Under section 51 of FOISA, I can issue an enforcement notice to an authority which has failed to comply with a provision of Part 1 of the Act, requiring it to take steps to comply within a specified time. Breach of this notice can allow me to refer the matter to the Court of Session which may deal with the matter as a contempt of court. However, I have no such powers in relation to breaches of the Codes of Practice – the most I can do is make a recommendation and rely on the good faith of the authority to follow it, or issue a practice recommendation under section 44 of FOISA (there are no penalties for failing to follow such a recommendation). Extension of the scope of enforcement notices to include failures to comply with the Codes of Practice, either immediately, or after a practice recommendation has not been actioned, would provide additional “teeth” to help drive continued improvement in FOI performance.”

The Scottish Parliament, 2019¹⁷

Section 12(a) of the Bill extends the enforcement powers of the Scottish Information Commissioner to require compliance with the [codes of practice proposed in the Bill](#) and the existing section 61 Code of Practice on records management.¹⁵ Section 12(b) of the Bill requires the Scottish Information Commissioner to 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 61.¹⁵ The Policy Memorandum to the Bill notes that this is "for consistency" with the Scottish Information Commissioner's duties under section 44 of FOISA to consult the Keeper before giving a practice recommendation to a Scottish public authority (other than the Keeper) in relation to compliance with the section 61 Code of Practice.

Further information on the [codes of practice](#), [practice recommendations and enforcement notices](#) can be found in the SPICe briefing, [The right to know: freedom of information in Scotland](#).

Repeal of the First Minister's "veto"

Section 52 of FOISA gives the First Minister the power to "veto" certain decisions made by the Scottish Information Commissioner in cases where the requested information is deemed of "exceptional sensitivity".¹ This power applies only when the Scottish Information Commissioner has issued a decision or enforcement notice to the Scottish Administration.ⁱⁱⁱ The decision or enforcement notice must also relate to information exempt from disclosure under:¹

- Section 29: Formulation of Scottish Administration policy
- Section 31(1): National security and defence
- Section 32(1)(b): International relations
- Section 34: Investigations by Scottish public authorities and proceedings arising out of such investigations
- Section 36(1): Confidentiality

iii The Scottish Administration is defined in section 126(6) of the Scotland Act 1998 and comprises the First Minister and other members of the Scottish Government, junior Scottish Ministers, holders of certain offices (e.g., Keeper of the Registers of Scotland), and the staff of the Scottish Administration.²³

- Section 41(b): Communications with His Majesty etc.

Further information on section 52 of FOISA is provided in the SPICe briefing, [The right to know: freedom of information in Scotland](#).⁴

The Scottish Information Commissioner recommended to the Session 5 PAPLS Committee that the section 52 power of veto given to the First Minister is removed from FOISA and indicated that this power does not serve the purposes or objectives of FOISA.¹⁷ The removal of the veto was supported by a majority of respondents to the Scottish Government consultation and the consultation on the Proposed Freedom of Information Reform (Scotland) Bill.^{10 13}

Section 13 of the Bill proposes the repeal of section 52 of FOISA and makes consequential amendments to repeal sections 49(9) and 51(5).¹⁵ The Policy Memorandum to the Bill states:

“ The lack of use of the veto provides clear evidence that there is no need for it. Should the public interest require that information be withheld then there are exemptions within the legislation which are available for Scottish Ministers to apply and, where Ministers disagree with the Commissioner’s conclusions on any case, an appeal can be made, as in all other circumstances, to the Court of Session on a point of law. Removing the veto strengthens Fol law in Scotland, and applies Fol law equally to all Scottish public authorities.”

The Scottish Parliament, 2025¹⁶

Failure to comply with a notice issued by the Scottish Information Commissioner under section 53

Section 53 of FOISA provides that the Scottish Information Commissioner can certify in writing to the Court of Session if a public authority fails to comply with a notice issued by the Commissioner.¹ The Court of Session may then deal with the authority as if it were in contempt of court.¹ In its written submission to the Session 5 PAPLS Committee, the Scottish Information Commissioner proposed a series of technical amendments to FOISA.¹⁷ One such recommendation was to amend section 53(1)(a) of FOISA to make it explicit that failure by a public authority to comply with the timescale specified in a Decision Notice can be referred to the Court of Session for enforcement.¹⁷

Section 14 of the Bill implements this recommendation.¹⁵ The current position under FOISA is that all notices issued by the Scottish Information Commissioner ([Decision Notices](#), [Information Notices](#), and [Enforcement Notices](#)) must include a deadline for compliance (sections 49(6)(c), 50(2)(b)(iii), and 51(1), respectively).¹⁶ Information Notices and Enforcement Notices can be referred to the Court of Session for any non-compliance, including failure to meet the timeframe.¹⁶ However, Decision Notices can only be referred to the Court of Session if a public authority fails to take the specific actions required in the notice.¹⁶ The Policy Memorandum to the Bill indicates this has led to a practical enforcement issue, and states:

“ 93. In practice, this can result (and has in the past resulted) in the Commissioner spending public money on legal fees to commence the certification procedure, only for the authority to comply late, at which point the Commissioner can no longer pursue the matter. To avoid this happening in the future, the Commissioner should be able to certify to the court failures to comply with the timescales set in Decision Notices.”

The Scottish Parliament, 2025¹⁶

Codes of practice

This section covers the following provisions of the Bill:

- [Proactive publication duty and publication code](#)
- [Freedom of information officer](#).

Proactive publication duty and publication code

As discussed in [Access to information held by Scottish public authorities](#), the Bill proposes replacing the current publication scheme duty with a duty to publish, underpinned by a code of practice issued by the Scottish Information Commissioner. ^{10 13}

Section 15 of the Bill proposes introducing two new provisions, sections 60A and 60B, into FOISA. ¹⁵ The Policy Memorandum to the Bill states:

“ The Member takes the view that a legal duty is needed to drive forward the pace and detail of disclosure. Public services should be transparent by design and the policy objective is to reduce the need for recordable FoI requests because the information is already available and accessible. The proactive publication duty should enable and ensure that public authorities have a committed, focussed and ongoing regard to the publication of information they hold, where it is in the public interest to do so.”

The Scottish Parliament, 2025¹⁶

Section 60A places a new statutory "proactive publication" duty on Scottish public authorities to take reasonable steps to organise the information they hold in relation to their functions and to make that information publicly available in an accessible format. ¹⁵ Authorities must also have due regard to how members of the public are likely to access that information. ¹⁵ In fulfilling this duty, public authorities will be required to comply with any relevant code of practice issued by the Scottish Information Commissioner under section 60B. ¹⁵

Section 60B gives the Scottish Information Commissioner the power to issue such a code of practice. ¹⁵ The "publication code" must specify:

- The categories of information that must be published;
- How the information should be made available and searchable; and
- How long it should remain available. ¹⁵

Before issuing the code, the Scottish Information Commissioner must consult:

- The Keeper of the Records of Scotland;
- Any public authority listed in schedule 1 of FOISA (or their representatives);
- Any body designated as a public authority under section 5 of FOISA;
- The Scottish Ministers; and
- Any other persons the Commissioner considers relevant.¹⁵

In addition, a draft of the publication code must be laid before and approved by the Scottish Parliament before the Scottish Information Commissioner can issue the publication code.¹⁵ The Delegated Powers Memorandum to the Bill states:

“ The new section 60B(3)(b) provides that the code made under new section 60B(1) would be subject to the affirmative procedure. As it is anticipated that the code would be substantial in nature, imposing duties on public bodies, the use of the affirmative procedure is considered appropriate to allow for parliamentary scrutiny.”

The Scottish Parliament, 2025²⁴

Public authorities will be required to comply with the publication code and the Scottish Information Commissioner may publish a revised publication code "from time to time".¹⁵ If the Bill is passed, the proposed section 60B(5) requires that the draft publication code is laid within 12 months of section 15 of the Bill coming into force.^{iv 15}

Freedom of information officer

Section 16 of the Bill proposes a statutory requirement for all public authorities subject to FOISA to designate a Freedom of Information Officer.¹⁵ This proposal was included in the Member's consultation on the Proposed Freedom of Information Reform (Scotland) Bill and received majority support from respondents.¹³

The Member, Katy Clark MSP, provides the rationale and policy objective behind the provision in the Policy Memorandum to the Bill. The Member states:

“ 101. The policy objective is to embed a professional culture, underpinned by sufficient resource and authority, within organisations when it comes to handling requests and publishing information. [...]”

“ 104. The Member believes there is clear and evidenced modelling behind this proposal. Under section 1(2) of the Public Records (Scotland) Act 36, an authority's records management plan must “identify the individual who is responsible for management of the authority's public records, and if different, the individual who is responsible for ensuring compliance with the plan”.”

iv Section 22 of the Bill proposes that section 15 comes into force 12 months after the Bill, if passed, receives Royal Assent.¹⁵ This phased commencement is to allow time for the development of the publication code and preparatory work by public authorities.¹⁶

“ 105. Selecting a bespoke officer is also the approach taken in data protection law. The EU’s General Data Protection Regulation (GDPR), retained in UK law as the UK GDPR, requires the appointment of a data protection officer in public authorities or bodies if they carry out certain types of processing activities. The DPA gives these provisions further effect and clarifies the role of a data “controller”. The Member believes this line of accountability and independent scrutiny should be followed as a model for consistent compliance under the Fol Act.”

The Scottish Parliament, 2025¹⁶

Section 16 of the Bill proposes the insertion of new sections 61A to 61C into FOISA. ¹⁵

- The new section 61A of FOISA provides for the designation of a freedom of information officer. It requires that a public authority designates a freedom of information officer and, in designating an individual, takes into account their professional qualifications, expertise, and ability to carry out the statutory tasks assigned to the role. The public authority must then provide the freedom of information officer's name and correspondence address to the Scottish Information Commissioner.
- The new section 61B sets out the expected position of the freedom of information officer within the public authority. It requires that the officer be involved in all matters relating to access to information, including both proactive publication and responses to information requests. The freedom of information officer will also be required to report to the public authority’s highest level of management. The public authority must provide the officer with the resources necessary to carry out their tasks and to maintain up-to-date expertise in freedom of information law and practice. In addition, the public authority must ensure that the freedom of information officer does not receive instructions which conflict with their duties under the proposed section 61C. The public authority must also not dismiss or penalise the freedom of information officer for carrying out their duties under section 61C. While the freedom of information officer may carry out additional functions, the public authority is required to ensure these duties do not interfere with their responsibilities under FOISA.
- The new section 61C defines the tasks of the freedom of information officer. These include advising staff and agents of the public authority on their FOISA obligations; advising the authority on compliance with FOISA, relevant codes of practice, and internal policies; reporting to senior management on compliance; and assisting the Scottish Information Commissioner in their exercise of functions under FOISA as reasonably required. In relation to internal FOISA policies, the freedom of information officer’s duties also include assigning responsibilities, raising public awareness of FOISA rights and duties, delivering staff training, and conducting audits of these policies where required.

Miscellaneous and supplemental

This section covers the following provisions of the Bill:

- [Disclosure of information to Scottish Public Services Ombudsman, Information Commissioner or to Audit Scotland](#)
- [Offence of altering records with intent to prevent disclosure.](#)

Disclosure of information to Scottish Public Services Ombudsman, Information Commissioner or to Audit Scotland

As discussed in [Exempt information](#), section 45 of FOISA governs the disclosure of information held by the Scottish Information Commissioner.¹ It mandates confidentiality for information obtained by or furnished to the Scottish Information Commissioner under or for the purposes of FOISA and prohibits disclosure unless disclosure meets certain lawful conditions.⁴ Unauthorised disclosure under section 45 of FOISA is an offence.¹

Section 63 of FOISA permits the Scottish Information Commissioner to share information (obtained or provided under FOISA) with the Scottish Public Services Ombudsman and the UK Information Commissioner.¹ The provision acknowledges that, in carrying out its statutory functions, the Scottish Information Commissioner may obtain information that is relevant to investigations or enforcement activities undertaken by other regulators.²¹ And as such, section 63 can provide the lawful basis required under section 45 for the disclosure of information to these regulators.²¹

Section 17 of the Bill proposes amending section 63 of FOISA to include Audit Scotland among the public bodies to which the Scottish Information Commissioner may disclose such information.¹⁵ This would apply where the information is relevant to Audit Scotland's statutory functions under the Public Finance and Accountability (Scotland) Act 2000.¹⁵

Offence of altering records with intent to prevent disclosure

Section 65(1) of FOISA makes it a criminal offence to alter, deface, block, erase, destroy or conceal information with intent to prevent disclosure following an information request being made.¹ The section applies to individuals who are officers of, or subject to the direction of, public authorities under FOISA.^v Section 65A of FOISA allows a prosecution for this offence to be brought within six months of sufficient evidence being obtained, and within a maximum period of three years from the date of the alleged offence.¹

Section 18 of the Bill proposes amendments to section 65 of FOISA to allow prosecutions to be taken forward, in the event information has been destroyed to prevent disclosure under FOISA, without requiring an information request to have been made.¹⁵ This amendment would be in addition to the existing provision which does require an information request to have been made.¹⁵ Section 19 of the Bill proposes amending section 65A to change the time limit for bringing a prosecution to three years from the beginning of a criminal investigation, rather than three years from the date of the alleged offence.¹⁵ The Bill does not propose changes to the penalty for the offence, which remains as set out in section 65(3) of FOISA: a fine not exceeding level 5 on the standard scale.¹

Amendments to the section 65 offence and section 65A time limit for proceedings in FOISA were not consulted on by the Scottish Government or Katy Clark MSP. However,

^v Section 68 of FOISA clarifies that the Scottish Government, Scottish Parliament, and Scottish Parliamentary Corporate Body cannot commit the section 65 offence, but the offence can apply to officials of those public authorities under FOISA.
¹

following the conclusion of their respective consultations, evidence disclosures at the UK COVID-19 Inquiry led to concerns about the destruction of official information communicated via unofficial platforms (e.g., WhatsApp). The Policy Memorandum accompanying the Bill references these developments, citing them as part of the rationale for the proposed changes. The Member states:

“ It is already a criminal offence under section 65 of the FoI Act to “alter, deface, block, erase, destroy or conceal” information with intent to “prevent disclosure” following an information request being made. However, the Member believes recent high-profile cases shows the need to strengthen enforcement in this area, including providing greater clarity on who such an offence applies to.”

The Scottish Parliament, 2025¹⁶

Further background on the status of deleted information under FOISA and the evidence disclosures from the UK COVID-19 Inquiry can be found in the following SPICe publications:

- [The right to know: freedom of information in Scotland \(The UK COVID-19 Inquiry and freedom of information practice\)](#)
- [Digital footprints to deleted trails: what is the status of deleted information and non-corporate messaging tools in the Freedom of Information \(Scotland\) Act 2002?](#)
- [The new Scottish Ministerial Code.](#)

Final provisions

Sections 20 to 23 of the Freedom of Information Reform (Scotland) Bill set out the final provisions of the legislation. ¹⁵

Section 20 gives Scottish Ministers the power to make regulations containing ancillary provisions to address any practical or technical issues that may arise during implementation of the Act, if the Bill is passed by the Parliament. Regulations made under this section are subject to the negative procedure, meaning they will take effect once made unless annulled by the Scottish Parliament. ²⁴

Section 21 clarifies that references in the Bill to the "FOI Act" refer to FOISA.

Section 22 sets out the arrangements for commencement if the Bill is passed and receives Royal Assent. In this case, most provisions will come into force automatically on the day after Royal Assent. However, certain provisions will not take effect until 12 months after Royal Assent, unless Scottish Ministers bring them into force earlier by making regulations. ²⁴ The policy rationale for this approach is to allow for a phased implementation and sufficient time public authorities and the Scottish Information Commissioner to adapt to and prepare for legislative change. ¹⁶ The following provisions of the Bill would come into effect 12 months after receiving Royal Assent, if the Bill is passed:

- The repeal of the duty to maintain a publication scheme, as outlined in sections 8(a), (b), and (d) of the Bill.
- The proposals in section 12, which would grant the Scottish Information Commissioner the authority to issue enforcement notices when a public authority fails to comply with a provision of a code of practice issued under FOISA. This includes a requirement to consult the Keeper of the Records of Scotland before issuing an enforcement notice related to non-compliance with the section 61 code of practice on records management.
- The introduction of a proactive publication duty, supported by a new code of practice, as set out in section 15 of the Bill.
- The proposals in section 16 to establish a Freedom of Information Officer within each public authority designated under FOISA.

Finally, section 23 provides the short title for the legislation, which, if passed by the Parliament, will be cited as the Freedom of Information Reform (Scotland) Act.

Bibliography

- 1 legislation.gov.uk. (2002). Freedom of Information (Scotland) Act 2002. Retrieved from <https://www.legislation.gov.uk/asp/2002/13/contents> [accessed 17 July 2025]
- 2 Scottish Information Commissioner. (2025). Scottish Information Commissioner. Retrieved from <https://www.foi.scot/> [accessed 17 July 2025]
- 3 legislation.gov.uk. (2004). Environmental Information (Scotland) Regulations 2004. Retrieved from <https://www.legislation.gov.uk/ssi/2004/520/contents> [accessed 17 July 2025]
- 4 Aitken, C. (2025, May 14). The right to know: freedom of information in Scotland. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2025/5/14/65591252-53c2-4a41-b8c3-262856e01756#> [accessed 17 July 2025]
- 5 The Scottish Parliament. (2020). Post-legislative scrutiny: Freedom of Information (Scotland) Act 2002. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/PAPLS/2020/5/19/Post-legislative-scrutiny--Freedom-of-Information--Scotland--Act-2002#Introduction> [accessed 17 July 2025]
- 6 The Scottish Parliament. (2021). Session 5 Post-legislative scrutiny of Freedom of Information (Scotland) Act 2002 and Lobbying (Scotland) Act: Letter to the Convener of the Standards, Procedures and Public Appointments Committee from the Convener, 10 September 2021. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-public-audit-committee/correspondence/2021/session-5-post-legislative-scrutiny-of-freedom-of-information-and-lobbying-scotland-acts> [accessed 17 July 2025]
- 7 Campaign for Freedom of Information in Scotland. (2025). News. Retrieved from <https://www.cfois.scot/> [accessed 17 July 2025]
- 8 The Scottish Parliament. (2022). Proposed Freedom of Information Reform (Scotland) Bill. Retrieved from <https://www.parliament.scot/bills-and-laws/proposals-for-bills/proposed-freedom-of-information-scotland-bill> [accessed 17 July 2025]
- 9 Scottish Government. (2022, November 28). Access to information rights in Scotland: consultation. Retrieved from <https://www.gov.scot/publications/access-information-rights-scotland-consultation/pages/1/> [accessed 17 July 2025]
- 10 Scottish Government. (2023, June). Access to Information Rights in Scotland: Consultation Analysis. Retrieved from <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-analysis/2023/06/access-information-rights-scotland-consultation-analysis/documents/access-information-rights-scotland-consultation-analysis/access-information-rights-scotland-consultation-analysis/govscot%3Adocument/access-information-rights-scotland-consultation-analysis.pdf> [accessed 17 July 2025]
- 11 Scottish Government. (2023, November 28). Access to information rights consultation: response. Retrieved from <https://www.gov.scot/publications/access-information-rights-scotland-response-analysis-consultation-responses/pages/1/> [accessed 17 July 2025]

- 12 Scottish Government. (2024, June 20). Freedom of information policy objectives: 2024 to 2026. Retrieved from <https://www.gov.scot/publications/freedom-of-information-policy-objectives/pages/background/> [accessed 17 July 2025]
- 13 The Scottish Parliament. (2023). Proposed Freedom of Information Reform (Scotland) Bill: Consultation summary. Retrieved from <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/final-version--foi-consultation-summary.pdf> [accessed 17 July 2025]
- 14 The Scottish Parliament. (2024). The Standing Orders of the Scottish Parliament 6th Edition. Retrieved from <https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/standing-orders> [accessed 17 July 2025]
- 15 The Scottish Parliament. (2025). Freedom of Information Reform (Scotland) Bill. Retrieved from <https://www.parliament.scot/bills-and-laws/bills/s6/freedom-of-information-reform-scotland-bill> [accessed 17 July 2025]
- 16 The Scottish Parliament. (2025, June 2). Freedom of Information Reform (Scotland) Bill: Policy Memorandum. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/freedom-of-information-reform-scotland-bill/introduction/spbill72pms062025accessible.pdf> [accessed 18 July 2025]
- 17 The Scottish Parliament. (2019). PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE POST LEGISLATIVE SCRUTINY - FREEDOM OF INFORMATION (Scotland) ACT 2002 SUBMISSION FROM: DAREN FITZHENRY, SCOTTISH INFORMATION COMMISSIONER. Retrieved from <https://webarchive.nrscotland.gov.uk/20240327034700/https://archive2021.parliament.scot/parliamentarybusiness/CurrentCommittees/112163.aspx> [accessed 20 July 2025]
- 18 The Scottish Parliament. (2025, June 2). Freedom of Information Reform (Scotland) Bill: Explanatory Notes. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/freedom-of-information-reform-scotland-bill/introduction/spbill72ens062025accessible.pdf> [accessed 18 July 2025]
- 19 Scottish Information Commissioner. (2017). Proactive Publication: time for a rethink?. Retrieved from https://www.foi.scot/sites/default/files/2022-09/Special_Report_Proactive_Publication_April_%202017.pdf [accessed 20 July 2025]
- 20 Scottish Information Commissioner. (2022, March 13). Freedom of Information (Reform) Scotland Bill Proposal: Consultation response from the Scottish Information Commissioner . Retrieved from <https://www.foi.scot/sites/default/files/2023-03/Private%20Members%20Bill%20FOI%20Consultation%20Response.pdf> [accessed 18 July 2025]
- 21 Dunion, K. (2011). *Freedom of Information in Scotland in Practice*. Edinburgh: Edinburgh University Press.
- 22 The Scottish Parliament. (2001). FREEDOM OF INFORMATION (SCOTLAND) BILL POLICY MEMORANDUM. Retrieved from [https://webarchive.nrscotland.gov.uk/20240327020238mp_/https://archive2021.parliament.scot/S1_Bills/Freedom%20of%20Information%20\(Scotland\)%20Bill/b36s1pm.pdf](https://webarchive.nrscotland.gov.uk/20240327020238mp_/https://archive2021.parliament.scot/S1_Bills/Freedom%20of%20Information%20(Scotland)%20Bill/b36s1pm.pdf) [accessed 20 July 2025]

- 23 legislation.gov.uk. (1998). Scotland Act 1998. Retrieved from <https://www.legislation.gov.uk/ukpga/1998/46/contents> [accessed 27 August 2025]
- 24 The Scottish Parliament. (2025, June 2). Freedom of Information Reform (Scotland) Bill: Delegated Powers Memorandum. Retrieved from <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/freedom-of-information-reform-scotland-bill/introduction/spbill72dpms062025accessible.pdf> [accessed 18 July 2025]

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Courtney Aitken on telephone number 85918 or Courtney.Aitken@Parliament.scot.

Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot. Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

