

Briefing for the Public Petitions Committee

Petition Number: [PE01539](#)

Main Petitioner: Anne Booth

Subject: Housing Associations to come under the Freedom of Information (Scotland) Act 2002

Calls on the Parliament to urge the Scottish Government to make an Order under Section 5 of the Freedom of Information Act (Scotland) 2002 to make all housing associations subject to the provisions of that Act. This will ensure that housing associations are more open, transparent and accountable to all their stakeholders, i.e. tenants and factored homeowners.

Background

In 2002, during Stage 3 of the Freedom of Information (Scotland) Bill, an amendment made at Stage 2, which added Registered Social Landlords (RSLs) (including housing associations) to the Bill, was removed before the Bill was passed.

In seeking to remove this amendment the Scottish Executive noted that it was concerned that “*many RSLs are small, informally run organisations that are not geared up for such stringent regulations*”. The Minister stated that “*There will be consultation before any organisation is added. I assure members that we expect the majority of organisations to be covered*”.

It is possible to extend the coverage of the [Freedom of Information \(Scotland\) Act 2002](#) (FOISA) by means of an order made under Section 5 of the Act, which amends Schedule 1, the Scottish Public Authorities covered by the Act.

Prior to his departure from office in 2012, the first Scottish Information Commissioner, Kevin Dunion, laid before the Parliament a special report [Informing the future: the state of freedom of information in Scotland](#). The purpose of the report was to give an opinion on the current state of FOI in Scotland, to draw attention to related matters which Parliament may wish to take into account and to make recommendations.

In discussing the Scottish Government’s decision not to add to the public bodies in Schedule 1 Mr Dunion raised concerns that:

“Scotland’s FOI regime is at risk of slipping behind other legislatures. The UK Government, for example, is actively considering the FOI designation of further bodies, including housing associations, and has just recently made its first designation order to extend FOIA to cover the Universities and Colleges Admissions Service (UCAS), the Association of Chief Police Officers (ACPO) and the Financial Ombudsman Service Ltd.”

The Scottish Parliament Justice Committee held an oral evidence session with Mr Dunion on [10 January 2012](#). Mr Dunion again mentioned his concerns about the decision of Scottish Ministers, in January 2011, not to designate further bodies:

“At the time, they said that they thought that it would be premature to designate before some of the deficiencies in the legislation had been remedied. We now know that the amendment bill that ministers propose is largely technical and does not really address any deficiencies that affect designation.”

Scottish Parliament Action

The Freedom of Information (Amendment) (Scotland) Act 2013 received Royal Assent on 19 February 2013. This Act amended the Freedom of Information (Scotland) Act 2002.

During the scrutiny of the Bill the question of housing associations being made subject to FOISA was raised. A Scottish Government official informed the [Finance Committee](#) that:

“Ultimately, extension is a political decision. The Scottish ministers’ view on that is clear. They have consulted contractors, Glasgow Housing Association and various other bodies and the decision was made to defer the decision on extension.”

Scottish Government Action

In July 2010, the Scottish Government had undertaken a [consultation](#) on whether coverage of FOISA should be extended to other bodies, including the Glasgow Housing Association (GHA).

In its [response to the consultation](#) the Government noted, that in the responses which mentioned it, there was near universal support for an extension to apply to all RSLs. The decision to consider extending coverage solely to GHA was seen as particularly anomalous.

The Government also noted that it would be consulting on a draft Scottish Housing Charter, which might contain a requirement on the provision of information to the public by registered social landlords on their housing services and governance arrangements.

The FOISA consultation resulted in a draft Section 5 order which covered arm's length culture, sport and leisure trusts. It was the Scottish Government's intention to consult further in due course on extending freedom of information coverage to other arm's length organisations.

The [Scottish Social Housing Charter](#) was published in 2012. It includes an outcome that:

"Social landlords manage their businesses so that:

tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides."

This outcome covers all aspects of landlords' communication with tenants and other customers. The Government saw the outcome as not just relating to how clearly and effectively a landlord provides information to those who want it, but also as a way of ensuring that tenants, and other customers, can use that information to improve services and performance. It was also a means of letting people know what the RSLs had done in response to complaints and feedback. It does not require landlords to provide legally protected, personal or commercial information.

The Scottish Government has no current plans to use a Section 5 order to extend coverage of FOISA to include housing associations or registered social landlords (RSLs). However, it is committed to further consultation – likely to lead to another Section 5 order – possibly in spring 2015. The scope of the consultation is, as yet, unknown, though, as shown, it previously has considered RSLs as potential candidates for extension.

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1 December 2014

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