

# Consultation on a proposed Freedom of Information Reform (Scotland) Bill

## SECTION 1 - ABOUT YOU

### 1. Are you responding as:

- an individual – in which case go to Q2A  
X on behalf of an organisation? – in which case go to Q2B

### 2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)

- Politician (MSP/MP/Peer/MEP/Councillor)  
 Professional with experience in a relevant subject  
 Academic with expertise in a relevant subject  
 Member of the public

### 2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)  
 Commercial organisation (company, business)  
X Representative organisation (trade union, professional association)  
 Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)  
 Other (e.g. club, local group, group of individuals, etc.)

### 3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.

- X I am content for this response to be attributed to me or my organisation  
 I would like this response to be anonymous (the response may be published, but no name)  
 I would like this response to be confidential (no part of the response to be published)

Name/organisation: Scottish Trades Union Congress (STUC)

### 4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)

Contact details: [fstuart@stuc.org.uk](mailto:fstuart@stuc.org.uk)

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Note: All answers to the questions may be published (unless your response is “not for publication”).

### Aim and approach

#### 5. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

The STUC has a longstanding position supporting Freedom of Information reform. At our Annual Congress in Aberdeen, in April 2022, the STUC unanimously resolved the following:

“That this Congress welcomes the Campaign for Freedom of Information’s (CFoIS) publication on 26<sup>th</sup> January of a draft bill to reform access to information rights. We believe that transparency and accountability enable scrutiny of how publicly funded services are designed and delivered such as in health, social care, education and the environment.

“Congress notes 2022 is a significant year as it is 20 years since the Freedom of Information (Scotland) Act 2002 (FoISA) was passed. It is also five years since the Scottish Parliament unanimously voted for post-legislative scrutiny of FoISA, four years since the Scottish Parliament agreed the Scottish Government should consult on proposals to further extend coverage of FoI law, three years since that took place which led to no action, and two years since the Public Audit and Post Legislative Scrutiny Committee agreed its Inquiry Report which itemised over 40 areas for reform.

“Congress further notes that Scottish Information Commissioner polling in 2019 reported that 80% of survey respondents agreed that private sector companies working on contracts for public bodies should be subject to the same FoI laws as public bodies. This legislative change still not happened.

“We urge the STUC Congress and the General Council to support the CFoIS campaign for legal reform to make rights stronger and increase duties to comply.

“Congress further agrees to encourage members across Scotland to support this campaign by registering their support with CFoIS and promoting information which explains the purpose and impact of the draft bill.”

### Detail of the proposal

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**6. Which of the following best expresses your view on the private sector being designated under FoISA if it is publicly funded and the service is of a public nature?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

Over decades, crucially important public services have been outsourced and privatised. Yet these services, which people rely on to live, still depend on billions of pounds worth of public money. There is no reason therefore that they should not have the same accountability as the public sector. Indeed, there is evidence that private sector delivery of public services, for example in social care and public transport, leads to poorer outcomes than public delivery.<sup>1</sup> This makes information rights about these services even more important.

**7. Which of the following best expresses your view on the third/charitable/voluntary sector being designated under FoISA if it is publicly funded and the service is of a public nature?**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

While the voluntary sector undertakes hugely valuable work, if the services that they are delivering are publicly funded and of a public nature, then the users of those services should be entitled to the same rights to information as those of public or private sector services.

**8. Which of the following best expresses your view on the creation of a new statutory officer within designated authorities – a Freedom of Information Officer?**

- Fully supportive

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<sup>1</sup> [https://stuc.org.uk/files/Policy%20Papers/Profiting\\_from\\_Care\\_Report.pdf](https://stuc.org.uk/files/Policy%20Papers/Profiting_from_Care_Report.pdf) and <https://www.getglasgowmoving.org/media/press-release-scotland-wide-campaign-for-better-buses-launched/>

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- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

The STUC is aware of numerous incidents of poor compliance with FoI, and believes this proposal could help address this.

### 9. Which of the following best expresses your view on creating a statutory duty to publish information?

- X Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

This should enhance readily available information and potentially limit the number of FOI requests made.

### 10. Which of the following best expresses your view on reducing exemptions under FoISA?

- X Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

The STUC support removing exemptions on section 31 on national security, section 33 on commercial interests and section 41 as proposed in the consultation.

### 11. Which of the following best expresses your view on amending FoISA to prevent the use of confidentiality clauses where inappropriate between public authorities and contractors providing public services?

- X Fully supportive
- Partially supportive

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- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

The STUC is aware of confidentiality clauses limiting public access to information relating to crucially important public services including PFI/PPP provision of school and hospital buildings and services.

**12. Which of the following best expresses your view on FoISA being updated to ensure aspects of procurement policy set by the Scottish Government are covered?**

- X Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

The Scottish public sector spends more than £13 billion a year buying goods and services, representing a significant contribution to the Scottish economy. If Scotland is to become a world leading Fair Work Nation by 2025, then the Scottish Government needs to use every lever at its disposal to ensure that public spend is achieving maximum social and economic benefit. An important step towards that is to ensure that private sector providers of public sector procured goods and services are subject to the same FOI duties as they would be if delivered in the public sector.

### Financial implications

**13. Any new law can have a financial impact which would affect individuals businesses, the public sector, or others. Do you think any cost is outweighed by the public interest benefit?**

- X Yes
- No
- Not Sure

The financial impact for individuals, businesses, and the public sector, is negligible while the public benefit in terms of information about what publicly funded public services could be incredibly significant.

### Equalities

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**14. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?**

The workforce providing outsourced public services (such as cleaning, catering, caring) are disproportionately likely to be women and of an ethnic minority background. While the main beneficiaries of public services are women in general and minority groups in particular. Increased information about these services would therefore be of benefit to these groups.

### **Sustainability**

**15. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?**

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

If Scotland is to meet its climate targets and become a world leading Fair Work Nation by 2025, then the Scottish Government needs to use every lever at its disposal to ensure that public spend is achieving maximum social and economic benefit and is in line with publicly declared Scottish Government aspirations. An important step towards that is to ensure that private sector providers of public sector procured goods and services are subject to the same FOI duties as they would be if delivered in the public sector.

### **General**

**16. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?**

No.

**Thank You**