



STUC submission to the Standards, Procedures and Public Appointments (SPPA) Committee call for views on the Freedom of Information Reform (Scotland) Bill

- 1. To what extent do you believe the proposals in the Bill will help achieve its primary aim of improving transparency in Scotland by strengthening the Freedom of Information (Scotland) Act 2002 (FoISA)?**

The STUC has a longstanding policy in support of strengthening Freedom of Information legislation, and in support of the Campaign for Freedom of Information Scotland (CFoIS). Within a context of ever-increasing outsourcing of public services, we believe this Bill will help improve transparency in Scotland.

- 2. Do you support the proposal that when a public authority is deciding whether to withhold information under a qualified exemption, it must begin from the position that the information should be disclosed?**

Yes. The Scottish Parliament was established on the principles of accountability and openness, with freedom of information being brought forward to 'entrench the new Scottish Parliament as being open and democratic'. Yet there are clear and well-documented issues around the culture and practice of FoI in Scotland. This provision would help address those issues.

- 3. Do you agree with the repeal of the current provisions in relation to publication schemes and the introduction of a proactive publication duty and code of practice?**

Yes. To maximise transparency, information should be pro-actively and routinely published.

- 4. Do you support the proposal that the 20-day period for a response to be provided should be paused rather than reset in relation to requests on which the public body seeks clarification from the requester?**

Yes. From our experience, while many Fols are dealt with fairly, on occasion public bodies seek unreasonable clarification (often towards the end of the 20 days) as a delaying tactic. This proposal would help prevent that.

- 5. Do you think that the provisions of the Bill in relation to the reporting by Scottish Ministers of the use of 'section 5' powers to designate new**

public authorities would, as the Policy Memorandum contends, “incentivise Scottish Ministers to regularly use their section 5 powers and at a pace which enables the system of independent regulation to operate effectively”?

Yes, but Parliament should keep this provision under review.

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.¹ This makes information rights about these services even more important.

Extending Fol to private and voluntary sector organisations running public services, would also benefit workers and trade unions access information for collective bargaining. This could help support efforts to level up what are often lower terms and conditions for workers in the voluntary and private sector.²

We therefore support any provisions which would help extend Fol to private and voluntary sector providers of public services.

6. Do you support the requirement for all public authorities subject to the Act to designate a Freedom of Information officer?

Yes. The successful implementation of Fol is dependent on staff resource and an Fol officer, similar to a data controller for GDPR, will help ensure delivery, accountability and consistency.

7. The Bill proposes the introduction of an offence to prevent destruction of information with the intent to prevent disclosure, even when no information request has been made. Do you support this proposal?

Yes. As detailed by the Fol Commissioner as well as in the press, there are clear issues with Ministers, special advisers, and officials, deleting messages to circumvent Fol. The introduction of an offence to prevent destruction of information to prevent disclosure is a legitimate and evidenced response to these issues, and would clarify expectations on civil servants.

8. Do you support the proposal to remove the power of the First Minister to ‘veto’ certain decision of the Scottish Information Commissioner in relation to information deemed to be of “exceptional sensitivity”?

¹ https://stuc.org.uk/files/Policy%20Papers/Profiting_from_Care_Report.pdf and <https://www.stuc.org.uk/resources/the-next-stop-stuc-bus-research.pdf>

² For example, between 2015 and 2021, social care worker pay in the public sector was, on average, £1.60 higher than the private and voluntary sector. See: https://stuc.org.uk/files/Policy%20Papers/Profiting_from_Care_Report.pdf

Yes. Removing the veto strengthens FoI law in Scotland and applies FoI law equally to all Scottish public authorities. It should also be noted that Ministers would still be able to apply for a public interest exemption and would still have the ability to appeal to the Court of Session on a point of law.

9. Do you support the proposals to strengthen the general functions and enforcement powers of the Scottish Information Commissioner, and to introduce an exemption for information provided to the Commissioner during the investigation of appeals?

Yes. The success of FoI depends on robust enforcement via the Information Commissioner and this requires reform to address loopholes.

10. Do you have any views on the estimated costs and savings associated with the proposed changes set out in the Bill?

Our general view is that the benefits in terms of transparency, accountability and ultimately delivering improvements to public services, outweigh any associated costs.

Moreover, by strengthening requirements, this Bill will encourage public bodies to put in place processes to collect and pro-actively disclose information more easily. That should limit any additional costs while also supporting positive public service reform.

11. Please use the text box below to set out any further comments you wish to make about the Bill.

STUC Congress has consistently voted for improvements to FoI legislation and we hope that this Bill can be completed within this session, not delayed till after the election.

For further information please contact:

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