



Standards, Procedures and Public Appointments Committee.

Stage 1 Scrutiny of the Freedom of Information Reform (Scotland) Bill

UNISON Scotland response Oct 2025

UNISON is Scotland's largest trade union with members delivering services across the public private and third sectors. We strongly support the principles of accountability and transparency in the delivery of public services. We were part of the campaign for the original Freedom of Information (Scotland) Act 2002 – and are fully supportive of this Bill put forward by Katy Clark MSP to bring FoISA up to date. We are pleased to be able to contribute to the Committee's scrutiny of this 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)?

FOI is a subject that matters to UNISON as not only do we use FOI requests to further the interests of our members, but it is frequently UNISON members who will be putting together FOI responses.

This Bill is a necessary step to maintain the effectiveness of FoISA. FoISA is outdated. The public sector delivery landscape has changed radically continues to do so. The law on rights and duties needs to keep up with the everyday operation of our public services.

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 principle that should underly Freedom of Information legislation is that of maximising transparency. A corollary of this is that the operative assumption is that all information is disclosable until shown to be otherwise. ie the subject of an exemption.

We think the Bill would change culture and practice by introducing a presumption in favour of disclosure, unless the requested information is subject to an absolute exemption. We also support the proposal in the Bill to require an FOI officer to be designated in each public authority whose functions are listed in section 16 of the Bill.

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. We think a proactive publication duty is a better system than having a publication scheme. The idea of developing a Code of Practice on information, which can be enforced by the Commissioner is one that we think would work.

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. We are fully cognisant of the fact that an initial FoI request may require clarification. Indeed it is far from unusual for some public bodies to provide advice about how a request could be better framed. This however is far from universal and we have encountered examples where we feel there has been deliberate 'foot-dragging' on the part of some bodies. The proposal in the Bill that of pausing, rather than resetting the timescale would be a step forward.

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 – although we would prefer a system whereby transparency rights follow the public pound.

In a deliberate act of policy since FoISA went into operation a whole range of public services have been transferred out of direct delivery by public sector organisations and given over to providers in either the third or private sector and as such being out of the remit of Freedom of Information. Despite this steady leaching of public rights successive government ministers have been very slow to act to either maintain or restore people's capacity to interrogate and enforce accountability from these bodies.

Leaving designation rights solely as an initiative to be taken by Scottish Ministers has shown itself to be ineffective. We support the proposal in the bill to allow Parliament to act in the face of ministerial inertia or reluctance.

It is of course important to have a system of consultation and decision making on new designations. The bodies concerned will need realistic lead in times to develop systems and train staff.

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

Yes. We believe that this would assist those in organisations in charge of providing responses. It would underline the status and importance of Freedom

of Information.

This approach mirrors that taken by data protection law. The FOI officer role has similar powers to those of Data Protection Officers under sections 69-71 of the DPA. The creation of the FOI officer role would reinforce the necessity of legal compliance but also help bodies realise that failure can damage their public reputation.

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. Section 65 of the existing FOISA lays out that destruction of information to prevent disclosure is an offence – this provision extends that offence to ‘pre-emptive’ deletion.

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”?

Yes. The Scottish Government already has at its disposal a variety of exemptions. Ultimately, they can challenge the Commissioner in court. These are more than sufficient safeguards.

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. Effective monitoring and enforcement are key to sustaining many rights and ‘the right to know’ is no different. An independent and empowered Scottish Information Commissioner is vital.

We support removing the publication scheme and its replacement with a Code of Practice for pro active publication. The Commissioner should be equipped to make act if mandatory elements of the code are breached.

Providing the Commissioner with a duty to prepare the new Code, capitalises on over 20 years of experience of overseeing compliance with the publication duty. The Code, as with current FOI Act Codes, would be subject to parliamentary approval, under the affirmative procedure.

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

We do not think that either costs or savings if the Bill is implemented are likely to be particularly significant. We would also point out that the value of transparency and accountability are far greater than their price, and that organisations should see the provision of information as part of delivering the

service.

Much of the infrastructure to deliver on the Bill is already in place. It is also the case the more information bodies publish pro actively – the less they are going to have to disclose by way of FOI.

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

The point UNISON Scotland made in 2019 to the Public Audit and Post Legislative Scrutiny Committee inquiry into FoISA still holds;

“The act has delivered up to a point. However, that point is going backwards. When the act came into force, we had a mosaic of public services. We now have a kaleidoscope and the act is not sufficient to sustain transparency in that rapidly changing environment. What we have is a double standard, when what we need is a single principle...If a service is being directly delivered by a public body, FOI can be applied usefully at times. When the service has been outsourced to a private company or a third sector body, that public body is putting itself beyond the accountability of FOI. Billions of pounds are being transferred from accountability and transparency to a much more opaque system.”

This Bill if implemented will make a significant improvement to standards of accountability and transparency in Scottish public life.

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