



**UNISON Scotland response:
Scottish Government Consultation on a Draft
Order extending coverage of the Freedom of
Information (Scotland) Act 2002 to Registered
Social Landlords**

March 2018

Introduction

UNISON is Scotland's largest trade union with members across the public, private and voluntary sectors. We welcome the opportunity to take part in this consultation.

General overview

UNISON believes that Registered Social Landlords (RSLs) should be covered under the Freedom of Information (Scotland) Act 2002 (FOISA). We welcome the Draft Order under Section 5, but are concerned that this extension is not only long overdue but has been delayed to such an extent that the proposed commencement date is now 1 April 2019, a full year later than in the December 2016 consultation on extending FOISA to RSLs.

We believe that the right to information is fundamental and should apply to all public services, however they are delivered. It is wrong that housing associations and other not-for-profit housing providers are not currently subject to FOISA. We welcome the inclusion of RSL's subsidiaries in the Draft Order. Tenants and the general public should not be faced with two tiers of information rights. Therefore, of course subsidiaries should be included.

Freedom of information is crucial in a democracy and has been undermined by the public losing rights through the changing way services are delivered, including some services being outsourced / transferred to different providers. As the Scottish Information Commissioner has been saying for many years, information rights in this context should follow the public pound. Stock transfers from local authorities to housing associations added to this information deficit. Extending FOISA to cover RSLs is necessary and should be implemented urgently.

RESPONSE TO CONSULTATION QUESTIONS

The Scottish Government proposes to designate Registered Social Landlords and their subsidiaries as public authorities for the purposes of the Freedom of Information (Scotland) Act 2002 in the terms set out in the draft order at Annex C.

1) Please provide all comments you wish to make on the terms of the draft order here:

We welcome the extension of FOISA to cover RSLs. It is disappointing that

the time taken to implement this means the commencement date has been delayed now until April 2019, 17 years after the promise made to include them.

It is also disappointing that the Scottish Government arrangements will leave a short period of time when RSLs might not be subject to the Environmental Information (Scotland) Regulations 2004, before the Section 5 extension commencement date.

A distinction is made in the consultation document between housing and the care services provided by some RSLs/subsidiaries. While there clearly can be entirely separate care services, there will be some housing support services which provide, for example, sheltered housing wardens or similar support staff, which should be covered by this extension. The Draft Order seems to ensure this will happen. It states that it applies to RSLs “insofar as they undertake functions as defined by the term ‘housing activities’ at section 165 of the Housing (Scotland) Act 2010 and in respect of which are already subject to regulation by the Scottish Housing Regulator.”

However, in noting the reasoning behind this, we would urge the Scottish Government to move quickly to fulfil its promise (given in the October 2017 biennial report on the exercise of Section 5 powers¹) to explore whether certain organisations - or class of organisation - delivering health and social care functions, but currently not subject to the Act, should be brought within the scope of the legislation. RSLs should clearly be included in that, as all public services that they deliver should be covered. As stated above, UNISON wants to see FOISA extended to all public services, regardless of the type of organisation delivering them.

It is right that subsidiaries are included. There should not be a two tier system and all the principles involved apply equally to subsidiaries. As our members working in the sector commented, it can be difficult to get information (such as important operational information and crucial health and safety information) from subsidiaries of their employer. FOI law must apply across the board.

Members also commented on the situation at Bield Housing and Care, which in October announced plans to close 12 residential care homes and make 200 staff redundant, with devastating consequences for elderly residents and for those workers. Greater scrutiny and transparency through such organisations being subject to FOISA for some of their services, could potentially have contributed to problems being flagged up at an earlier stage.

2) Please provide any comments you wish to make on the Business and Regulatory Impact Assessment here:

Any additional administrative and financial pressures places on RSLs and their subsidiaries would not be great. UNISON notes that the impact of previous designation (4.14) shows that the prediction of low numbers of

¹ <http://www.gov.scot/Resource/0052/00526916.pdf>

requests has proven to be broadly accurate. We suggest that pro-active publication, with model publication schemes, will help RSLs comply and will reduce the number of requests because information is easily and readily available. RSLs already have systems in place to comply with various reporting requirements so we do not believe FOI will be onerous for them.

We regularly highlight some of the major impacts of public spending cuts on local authorities, health boards and other parts of public service. However, all are under the legal obligations of FOISA to respond to information requests and they all do this. There are often staffing pressures on those delivering the service and UNISON represents many freedom of information officers and others who work on responding to FOI requests. Where relevant, we make the case for more staffing/resources. However, this is important legislation delivering important rights, which should be extended so that information that must be provided about council housing must also be provided about other social housing. This impact assessment should be to assist with the implementation, not to argue against the principles involved.

We believe that the Office of the Scottish Information Commissioner should be provided with sufficient extra funding to deal with increased work including the work to assist RSLs prepare for compliance; and (while not related to this consultation) including its further intervention examining the Scottish Government's FOI practice, as well as for its work related to the forthcoming parliamentary post legislative scrutiny of FOISA.

We welcome the Scottish Government's comment (4.21) on suggestions that RSLs already provide considerable information through reporting requirements under the Scottish Social Housing Charter and model publication framework. The Scottish Government correctly makes the point that these do "not provide the statutory underpinning of information rights central to Freedom of Information legislation."

Conclusion

In addition to our response, we also support the consultation response submitted by the Campaign for Freedom of Information in Scotland, which does vital work to promote FOI rights, including the importance of the human right to access information. There should be a universal, statutory, enforceable right to information about all public services, regardless of what type of body delivers the service. This Draft Order should be urgently followed by further use of Section 5 to extend FOISA coverage to all public services in Scotland.

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