



## Briefing - Support Reform of Scotland's Fol law

CFoIS is building all party support for Katy Clark MSP's [Freedom of Information Reform \(Scotland\) Bill](#), as it will deliver transparency by design, strengthen accountability and increase informed scrutiny across 10,000+ public bodies in Scotland. The Jimmy Reid Foundation supports legal reform too and will make a submission to voice heard and make a submission on the Bill to the SPPA Committee by [22<sup>nd</sup> October](#).

The Bill is only 23 sections over nine pages but is powerful:

- Introduces a presumption in favour of disclosing the information requested, unless subject to an absolute exemption.
- Introduces a new, enforceable duty to pro-actively publish information
- Improves corporate compliance by designating an Fol officer in each body
- Strengthens the enforcement powers of the Scottish Information Commissioner
- Addresses the failure of Scottish Ministers to designate new bodies under Fol law by creating a process for the Scottish Parliament to add a body instead.

### Legal Reform of Fol Law Overdue and Urgent

The Freedom of Information (Scotland) Act 2002 (FoISA) must be reformed. Along with journalists and campaigners who have evidenced operational failings and legal loopholes, the 2020 inquiry report from the Public Audit and Post Legislative Scrutiny Committee catalogued the proven problems and amendments considered necessary to strengthen Scotland's 23 years old Fol law. Current operational problems include:

- Public dissatisfaction with the replies received to information requests have resulted in a 60% increase in appeals to the Commissioner over last 6 months.
- Scotland's largest health board, NHS Greater Glasgow and Clyde, along with NHS Forth Valley are under a Level 3 Intervention by the Commissioner because failures in legal compliance - there are only four levels!

In 2024 [public support](#) for Fol reform was reported in independent polling:

- 93% of respondents believe Fol should be extended to cover publicly-funded health and social care services (including care homes)
- 89% agreed all organisations providing public services under contract to a public body should fall within scope.
- 79% believe it should be a criminal offence for public bodies or their officials to try to subvert Fol legislation.

### Delivering Cultural Change Through Legal Reform

Legal reform is not enough as cultural change is essential to make the law work and the Bill seeks to deliver that in three ways: section 1 requires the authority to apply a presumption in favour of disclosing the information unless it is subject to an absolute exemption; section 15 introduces a proactive publication duty which is enforceable; section 16 requires the appointment of an Fol officer who will have the corporate, legal authority and resources to carry out the Fol duties of the public body including the duty to advise and assist requestors before and after they make an information request.

### **Pro-active Publication of Information**

Section 15 of the Bill replaces the discredited “Model Publication Scheme” with a ‘proactive publication duty’ so that categories of information are routinely published. This increased flow of information is designed to avoid the need for some FoI requests. The duty is enforced by the Commissioner and is guided by a ‘Code of Practice’ which is subject to a consultation so TUs and the public can have their say. The Code will be introduced within a year of the Bill’s Royal Assent.

### **Increased Enforcement Powers for Independent Commissioner**

Technical amendments and specific new powers are introduced in response to problems. For example there is a new offence of altering records with intent to prevent disclosure, which is a reaction to the evidence led at the UK Covid Inquiry.

### **Can Legal Reform of FoI Law Be Delivered by a Member’s Bill?**

The Scottish Government declined to legislate so Katy Clark introduced a member’s Bill. Unusually, it is not a single issue Bill but specific provisions to fix an existing law. Normally that would be done by Scottish Ministers. This Bill tests the ability of Parliament to legislate when Ministers refuse to do so and to steer a member’s bill through the process to achieve Scotland wide legal reform on one of the pillars of the Scottish Parliament which was designed to be open, accessible and accountable. The Stage 1 consultation process on the Bill’s general principles closes on [22<sup>nd</sup> October](#).

### **Addressing “official” Misinformation**

The Stage 1 consultation process got off to a tricky start as the Standards, Procedures and Public Appointments (SPPA) Committee call for evidence contained two errors.

- Erroneously the website stated that the Bill would bring more bodies under freedom of information rules, such housing associations. However RSLs were designated under FoISA in 2019 along with some of their subsidiaries.
- Erroneously the website stated that the Bill would bring third sector organisations under FoISA. That is wrong. The Bill proposes an additional mechanism to enable Parliament to initiate new designations under FoISA. Core to the process is consultation and then a decision is made. Currently the pace of designation is slow because the initiative needs to come from Scottish Ministers.

The errors have now been fixed but how the first bullet point has been worded is being wrongly interpreted by some as the removal of the public interest test when applying an exemption to disclosure. This is not accurate and CFoIS has produced a [briefing](#)

### **Conclusion**

There have been two decades of progress but there are significant and evidenced problems in exercising the enforceable right to information. There are challenges to the Bill becoming law over the next six months as MSPs may decide not to support its General Principles or the SPPA Committee drops the Bill after the Stage 1 report is published. Action is needed now to ensure the Bill survives and progresses into law.

### **What Can You Do?**

Please urge MSPs of all parties to support the Bill and please submit a Stage 1 consultation response on the Bill’s general principles, by [22<sup>nd</sup> October](#).

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