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Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan

Report on the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019



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Local Government and Communities Committee

To consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities and Local Government.



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Introduction

1. The Local Government and Communities Committee reports to the Parliament as follows—
2. The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) (Order 2019) was laid before the Parliament on 7 February 2019 and was referred to the Local Government and Communities Committee for consideration.
3. This instrument is subject to affirmative procedure (Rule 10.6) and it is for this Committee to recommend to the Parliament whether the Order should be approved.
4. The policy objective of this Order is to extend coverage of the Freedom of Information (Scotland) Act to registered social landlords (RSLs) and their subsidiaries. This means that freedom of information requests can be made directly to these bodies in respect of their functions of a public nature (as specified in the Order).
5. These bodies exercise functions of a public nature by providing certain housing services, which involves providing housing accommodation and related services. It also includes anything done, or required to be done, in relation to the prevention and alleviation of homelessness, the management of housing accommodation (where the RSL has granted a Scottish secure tenancy or short Scottish secure tenancy), and the provision and management of sites for gypsies and travellers.
6. The changes in this Order are intended to come into force on 11 November 2019 .

Consideration by Committees

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 19 February 2019 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Local Government and Communities Committee consideration

8. The instrument relates to a former petition by Anne Booth, [PE1539: Housing Associations to come under the Freedom of Information Act \(Scotland\) 2002](#), previously considered by the Committee. On 24 January 2018, the Committee agreed to close the petition as, at that time, the Scottish Government had agreed to seek to extend the Act to registered social landlords. In closing the petition, the Committee agreed to seek written evidence from the petitioner if and when an instrument was lodged. The Committee received a written submission from the petitioner welcoming the Order, but expressing disappointment that it does not extend to registered social landlords and their subsidiaries providing factoring services to private home owners.

9. The Committee also received a written submission from the Campaign for Freedom of Information in Scotland (CFoIS) which is of the view that registered social landlords and all their subsidiaries should be designated under the Freedom of Information (Scotland) Act 2002. However, in relation to the Order, CFoIS state-

” ...instead of simply designating RSLs and their subsidiaries, which enables a presumption of access to information unless one of the exemptions applies, the Scottish Government has deviated and adopted a complicated approach.

It was therefore CFoIS's position that "the result of this approach is a draft SSI that lacks precision which will lead to inconsistencies in interpretation".

10. The Committee also issued a targeted call for written evidence to the Scottish Information Commissioner and the Scottish Federation of Housing Associations (SFHA), recognising previous concerns they had raised during the consultation period for the draft Order. The Scottish Information Commissioner said he was supportive of the Order and was content that the wording addressed previous concerns raised. The SFHA also welcomed the Order, highlighting that it took account of the “majority of points raised”. However, the SFHA remained concerned about some elements of the Order including “the implementation date; which subsidiaries are covered/how open the order is to interpretation; and other legislation that FOI extension impacts”.
11. At its meeting on 20 March 2019, the Local Government and Communities Committee took evidence on the instrument from:
 - Graeme Dey, Minister for Parliamentary Business and Veterans, Gerry Hendricks, Head of Freedom of Information Unit, and Graham Crombie, Head of Policy, Freedom of Information Unit, Scottish Government.
12. During the evidence session, the following points were raised:

- whether the Order would remove the anomalous situation whereby identical services, such as the provision of housing accommodation by a local authority, are already subject to freedom of information legislation;
 - whether it is Scottish Government policy that other anomalous situations are candidates for FOI extension;
 - the impact of any consequences of extending freedom of information legislation on other legislation which registered social landlords also come under;
 - the extent to which designated bodies, for the purposes of FOI legislation, have been restricted to the functions that they carry out, has happened before;
 - the information that people can obtain from housing associations under FOI legislation and the extent to which this may cause confusion and difficulty;
 - the rationale as to why the Order does not cover factoring services;
 - the preparedness of registered social landlords to comply with freedom of information legislation, recognising that a significant amount of work will be required by designated bodies;
 - the resource and cost implications of the Order.
13. The discussion on these matters can be found in the Official Report of the meeting at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12014>
14. Following the evidence session on the instrument, Graeme Dey moved motion S5M-15924—

That the Local Government and Communities Committee recommends that the Freedom of Information (Scotland) Act 2002 (Designation of Persons and Scottish Public Authorities) Order 2019 [draft] be approved.

Following a short debate on the instrument, the motion was agreed to without division.

Conclusions

15. The Local Government and Communities Committee recommends that the Freedom of Information (Scotland) Act 2002 (Designation of Persons and Scottish Public Authorities) Order 2019 be approved.

