

A Consultation: Extension of Freedom of Information (Scotland) Act 2002 (FOISA) to private and third sector providers of care home and 'care at home' services

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1. Ministerial foreword:

For over 20 years the statutory rights to information provided by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 have formed the bedrock of our commitment to transparency in government and public services in Scotland. The Scottish Government is determined that these should be effective in providing access to information about all public services – especially those which meet people’s most critical needs.

Since 2013 this government has extended FOI rights in a number of areas not originally covered by the legislation. In 2019 the law was extended to Registered Social Landlords in recognition of the important services they deliver, and the impact of these services on people’s lives.

This consultation seeks views on whether the rights and obligations of FOI law should now, and where possible, similarly be extended to private and third sector (i.e. voluntary and not-for-profit) operated care home and ‘care at home’ services, in recognition of the importance and impact of the services they deliver.

There can be no doubt that care home and ‘care at home’ services do indeed provide services of the utmost importance for people and communities in Scotland, including for some of our most vulnerable citizens. For that reason, the Scottish Government has been clear that it sees a case in principle that these services may be considered to be public functions, and that statutory FOI obligations should therefore be extended to private and third sector providers of such services. Doing so would bring the transparency obligations of those providers into line with those of public sector providers of similar services e.g. local authority run services.

This consultation will help to inform our detailed assessment of whether, and when, providers of these services can be understood to be delivering public functions. Subject to the outcome of that assessment, it will also inform our decisions on whether, and in what fashion, we should exercise the power to extend. This government recognises the significant pressures that the social care sector is facing at the current time in Scotland, and the need to take account of these as we approach the question of how and whether these rights and obligations should be extended to private and third sector providers.

That is why we hope as many people as possible will engage with this consultation. First and foremost, we want to hear the views of people who rely on care home and ‘care at home’ services for their own care, their friends and family and the wider community. Our decisions about the scale and pace of any future roll out of FOI in the sector must be informed by their perspectives on how and whether extension of FOI law would help them to access information and better scrutinise and understand these services.

We also need to hear the views of people who work in and with the sector, and from the provider organisations themselves. To be most effective, any future roll out of FOI will need to take place in partnership with the sector, taking its needs into account.

The Scottish Government has engaged with a number of individuals and organisations with interests in the sector and in transparency in the preparation of this consultation document. The launch of the document marks an important next step in the journey, and we hope it will provide a useful means by which all with an interest in the sector can contribute their views.



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2. Introduction

The Freedom of Information (Scotland) Act 2002 (FOISA) gives people important rights to ask for and receive information from the government and public services in Scotland.

The Scottish Government sees these rights as a key part of being open and transparent with the public. The Scottish Government believes these rights should enable people to access information about all public services in Scotland.

Section 5 of FOISA allows the Scottish Government to extend the legislation to further organisations. This can include organisations that provide public functions, even if they are not part of the public sector.

The Scottish Government believes that social care services—like care homes and ‘care at home’—are vital services for our communities. Many of these services are delivered either by private businesses or by charitable or not-for-profit organisations (i.e. the third sector). They are often supported by significant public funding, and always subject to significant public regulation and oversight. The Scottish Government is consulting on extension of FOISA to these services because it recognises the importance of these services for people and because of its commitment to effective rights of access to information about all public services.

Responses to the consultation will inform our assessment of whether and when care home and ‘care at home’ services can be considered to be providing public functions. Subject to the outcomes of that assessment it will also inform our decisions on whether, and in what fashion, to exercise the Scottish Government’s power to extend FOISA to private and third sector providers of such services.

There is already significant reach of access to information rights within the social care sector. Local authorities, NHS Boards and Integration Joint Boards are already subject to FOISA. This means that they have to respond to requests for information they hold about the services they commission or provide.

This consultation seeks views on the extent to which making third and private sector social care providers directly subject to FOISA in their own right, would meaningfully enhance those rights of access to information regarding the delivery of social care services in Scotland.

Ministers recognise the diversity of provision in the sector as well as the challenges faced by many private and third sector providers of care services. This consultation therefore also seeks input on the best and most proportionate approach to any extension of FOI rights in the sector – to ensure that extension of access to information rights does not create an excessive burden on providers and therefore does not compromise the resources available to deliver quality care services.

The Scottish Government hopes that this consultation will allow all stakeholders to engage in a constructive discussion on these matters.

3. Extension of FOISA to private and third sector operated care home and 'care at home' services.

The Freedom of Information (Scotland) Act 2002 (FOISA) and Environmental Information (Scotland) Regulations 2004 (EIRs).

FOISA provides a right to access information held by Scottish public authorities. It places duties on all Scottish public authorities to:

- Proactively publish certain information about their work
- Provide information in response to requests, within 20 working days
- Provide advice and assistance to requesters of information

The EIRs provide similar rights, specifically for environmental information. Release of information under FOISA or the EIRs is considered to be release into the public domain.

FOISA and the EIRs contain exemptions to protect sensitive information, including personal data. Therefore, FOISA and the EIRs are generally not the route by which any individual should seek to access information which relates to themselves personally or to any other individual. To access their own personal data, individuals should exercise their subject access rights under data protection law.

3.1 Scottish Ministers' power to extend coverage (section 5)

Under section 5 of FOISA, the Scottish Ministers may designate as a 'Scottish public authority', for the purposes of FOISA and the EIRs any organisations which:

- (a) appear to the Scottish Ministers to exercise functions of a public nature; or
- (b) are providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority

Previous section 5 orders have extended FOISA to:

- (a) arms-length external organisations set up by local authorities to deliver recreational, sporting, cultural or social facilities and activities (2013 Order)
- (b) grant-aided schools and independent special schools (2016 Order)
- (c) providers of secure accommodation (2016 Order)
- (d) Scottish Health Innovations Limited (2016 Order)
- (e) private prison contractors (2016 Order)
- (f) registered social landlords (2019 Order)

3.2 Factors based approach to extending coverage

FOISA does not provide a definition of 'functions of a public nature'. However, the Scottish Government considers that these factors can be used as part of its determination of whether an organisation – or category of organisations - delivers such functions:

- the extent to which particular functions are derived from or underpinned by statute, or otherwise form part of the functions for which the state has generally assumed responsibilities;
- the extent of public funding of the activity;
- whether the functions are of a nature that would require them to be performed by a public authority if the body did not perform them;
- whether the body exercises extensive or monopolistic powers;
- the extent to which the body is subject to state regulation, oversight or control.

More widely, we would also consider as part of this assessment process:

- whether the public have lost rights to access information under the Act as a result of outsourcing of how public services are delivered;
- whether coverage would impose a significant administrative burden that may be considered to have a disproportionate business impact;
- the extent to which the body seeks to achieve some collective benefit for the public and is accepted by the public as being entitled to do so.

3.3 Purpose of this consultation

The purpose of this consultation is therefore to:

- inform the Scottish Government's determination of whether (and when) providers of care home and 'care at home' services can be considered to be providing functions of a public nature, or to be delivering the functions of Scottish public authorities under contract.
- subject to that determination, to inform the Scottish Government's decision-making regarding the use of Ministers' power to extend FOISA to such services.

4. Care Home and 'Care at Home' Services in Scotland

A care home service is a service that provides accommodation together with care to meet an individual's needs, which might include nursing or personal care or support. The Public Services Reform (Scotland) Act 2010 (the 2010 Act) provides an existing statutory definition of a care home service:

a service which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need; but the expression does not include— (a) a hospital; (b) a public, independent or grant-aided school; or (c) a service excepted from this definition by regulations.¹

A 'care at home' service provides personal care or support to a person within that person's home. 'Care at home' means getting help in one's own home with everyday tasks. This can include things like:

- Getting dressed
- Taking a bath or shower
- Making meals
- Taking medicine

'Care at home' services are regulated by the Care Inspectorate as a 'sub-type' of 'support service'. Support services are classed as 'care at home' wherever they provide personal care or personal support to a person within that person's home. A support service also has an existing definition in the 2010 Act:

(1) A "support service" is a service provided, by reason of a person's vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by—

- (a) a local authority;
- (b) any person under arrangements made by a local authority;
- (c) a health body; or
- (d) any person if it includes personal care or personal support.

(2) But—

- (a) the expression does not include a care home service, an independent health care service (within the meaning of section 10F of the National Health Service (Scotland) Act 1978 (c. 29)), a service which provides overnight accommodation, an adoption service, a fostering service or a service excepted from this definition by regulations;
- (b) paragraphs (c) and (d) do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29);

¹ [Public Services Reform \(Scotland\) Act, Schedule 12](#), second paragraph

(c) paragraph(d) does not apply if the provider is an individual who personally and solely gives the care or support in question.²

‘Care at home’ services enable individuals to live independently or with greater autonomy. They generally provide care tailored to the individual's specific requirements all with a view to promoting the well-being and quality of life of the person receiving care while maintaining their dignity and rights.

The Care Inspectorate has specific duties to carry out yearly, unannounced inspections of the following categories of care services:

- Care Home
- ‘Care at home’
- Secure accommodation³

These duties reflect the need for robust regulation of these services, recognising their central importance in providing services, often for vulnerable individuals.

Providers of secure accommodation have been subject to FOI law since 2016.⁴ Extending FOI law to care home and ‘care at home’ services, or even some of these services, would have the effect of making all three categories of service for which there is an enhanced level of regulation and inspection subject, at least in part, to FOI law.

4.1 Provision of care home and ‘care at home’ services in Scotland

According to Care Inspectorate registration data, as of 31 January 2025 there were 1,351 care home services in Scotland of which 823 were operated by private sector providers and 290 by voluntary or not for profit providers. There were 223 care home services operated by local authorities and 15 by NHS Boards.

Also, as of 31 January 2025 there were 1,232 ‘care at home’ services in Scotland. Of these 567 were operated by private sector providers, 480 by voluntary or not for profit providers, 170 by local authorities and 15 by NHS Boards. Of the 1,047 private and third sector operated ‘care at home’ services, 615 were operated as part of a combined service with a Housing Support Service.⁵ Housing Support Services deliver services to support individuals to live as independently as possible in a range of settings including – but not limited to – sheltered housing.⁶

Both categories of service – care home and ‘care at home’ – include all care which meets the statutory definitions set out above, no matter whether the care is intended to be long or short term in duration. Some providers specifically offer services intended to meet short term or respite care needs.

² [Public Services Reform \(Scotland\) Act, Schedule 12](#), first paragraph

³ See The Public Services Reform (Social Services Inspection) Regulations 2011, as amended by [The Public Services Reform \(Social Services Inspections\) \(Scotland\) Amendment Regulations 2012](#)

⁴ see [The Freedom of Information \(Scotland\) Act 2002 \(Designation of Persons as Scottish Public Authorities\) Order 2016](#)

⁵ [Care Inspectorate Datastore](#) (see: Datastore (as at 31 January 2025) Excel with Pivots)

⁶ see [Housing support services | Care Information Scotland](#)

1. Do you agree that FOISA should be extended, where possible, to private and third sector (charity and not-for-profit organisation) run care homes?

Yes / No / No view

Please use the space below to set out your detailed views:

[please insert response here.....]

2. Do you agree that FOISA should be extended, where possible, to private and third sector (charity and not-for-profit organisation) run 'care at home' services?

Yes / No / No view

Please use the space below to set out your detailed views:

[please insert response here.....]

4.2 The role of public funding in identifying functions of a public nature

There is substantial public funding of both care home and 'care at home' services in Scotland. This is mainly delivered by local authorities, operating as part of local Health and Social Care Partnerships. It is clear that this public funding is one factor informing calls for extension of FOI law to this sector. However, it is also clear this is not the only reason.

Care home and 'care at home' services are recognised as providing critically important services for those who rely on them. These services are subject to significant regulation and oversight, whatever funding arrangements are in place for an individual's care.

In the care home sector, 64% of places are either wholly or mainly funded by the relevant local authority.⁷ To be eligible for a publicly funded care home space the recipient must not have assets worth more than £35,500 for 2025/26.⁸ Interim standard rates paid by local authorities for 2025/2026 are:

- £1,013.05 a week for nursing care
- £881.98 a week for residential care⁹

Individuals entitled to this funding may choose to 'top up' this funding with their own money, if they wish to live in a care home which charges higher fees than these.

⁷ see [Care Home Census for Adults in Scotland](#) – 2014-2024 (page 38)

⁸ see [Revised guidance on charging for residential accommodation](#) – 31 March 2025

⁹ see [Standard rates | Care Information Scotland](#)

The remaining 36% of care home places are mainly funded by the person receiving the care. Nevertheless, those who mainly fund their own care are normally eligible for some funding in the form of 'free personal care' and 'free nursing care' payments which are currently set at:

£254.60 each week for personal care
£114.55 each week for nursing care.¹⁰

Care homes are not unique in delivering both publicly funded and privately funded services. Providers of primary care (GPs, dentists, opticians, pharmacists) have been subject to FOI law in Scotland since FOISA came into force in 2005. However, FOI law only applies to the services they deliver on behalf of NHS Boards. Information about similar services delivered privately to individuals is not subject to FOI law.

Similarly, Registered Social Landlords were made subject to FOISA in 2019 in relation to most of their functions, but not for the provision of factoring services provided to and paid for by home owners.

The care home sector may however be somewhat unique in the extent to which very similar services may be supported by a different mix of public and private funding from one individual to the next.

In the 'care at home' sector there is also wide entitlement to 'free personal care'. Nursing care required by people in their own homes is provided by the NHS and is not included within the definition of 'care at home'.

Statistics for 'care at home' only exist for services in which the local authority has some role in organising or funding the care. Where the local authority has determined that an individual requires 'care at home', those aspects of the service which relate to an individual's personal care should be provided free of charge. An estimated 65,780 adults in Scotland received 'care at home' - with local authority involvement - in the last week of 2023-24. It is estimated that around £739m was spent on personal care for adult 'care at home' clients in 2023-24.¹¹

Distinguishing publicly funded 'care at home' services from privately funded ones may be more straightforward than in the care home sector. Where a local authority has determined that an individual needs personal care or support at home it is ordinarily required to provide that care free of charge. Individuals may decide to pay for additional services which fall outside the definition of personal care or which the local authority has not assessed them as needing. However, these would be additional to any services which the authority had assessed the individual to need.

Publicly funded 'care at home' might therefore be defined as those personal care and support services which a local authority has a duty to fund. In light of the above:

¹⁰ see [Costs - mygov.scot](https://mygov.scot)

¹¹ Figures derived from [Free Personal and Nursing Care, Scotland, 2023-24 - gov.scot](https://gov.scot)

3. Whether or not you actually support any extension, please indicate which of the following statements best reflects your view:
- a) If FOI law were to be extended to care home and ‘care at home’ providers, information about all such services should, where possible, become subject to FOI law, irrespective of the level or type of public funding that supports those services.
 - b) If FOI law were to be extended to care home and ‘care at home’ providers, only information about such services which are mainly publicly funded should, where possible, become subject to FOI law.
 - c) No view.

3(a). If you chose option ‘b’ above, please set out any more detailed thoughts you may have on the type or level of public funding that should result in the provider becoming subject to FOISA:

[please insert response here.....]

4.3 Services provided to children and young people

Care home and ‘care at home’ services both sometimes provide services for children and young people, under the age of 18. These do not include care provided to children or young people solely because of their young age e.g. childcare. They also do not include other care service types commonly associated with children and young people such as adoption and fostering services or kinship care. However, they do include care home and ‘care at home’ services provided to those under the age of 18, in order to address a particular vulnerability or need.

On 31 January 2025 there were 1,113 private and third sector run care home services in Scotland. Out of these, 237 provided services to children and young people. Children’s care homes are often small in scale, providing services to only a small number of children – or even to one child only. The largest private or third sector care home for children registered with the Care Inspectorate had 28 registered places. The average number of registered places per service was 4.5.

In comparison, the largest care home for adults registered with the Care Inspectorate had 225 places. The average number of places per service in adult care homes was 40.9 registered places.¹²

Whilst issues of provider size are discussed in the following section, the Scottish Government recognises that the generally small size of individual services in the children and young people’s sector may give rise to issues in relation to FOISA compliance, that would merit special consideration. This may be the case even where the service is delivered by a larger organisation, which also delivers other similar services. Firstly, with very small services there may be an increased likelihood that information about the delivery of the service may be considered exempt from disclosure on data protection grounds (e.g. where releasing information

¹² [Care Inspectorate Datastore](#) (see: Datastore (as at 31 January 2025) Excel with Pivots)

about a service would implicitly confirm details of an individual child's care, due to small numbers).

There could also be particular challenges in very small services in balancing the resource demands of FOISA compliance with those related to the direct provision of care. Even where the service is supported by a larger organisation, handling information requests about a small service may inevitably place demands on a small number of team members who directly deliver that service. On the other hand, it may also be reasonable to assume that small services could generally expect to receive only small numbers of requests.

Care Inspectorate management data indicates that of the 1,239 'care at home' services registered with the Inspectorate on 31 December 2024, 151 confirmed that they provided services to children and young people. Of these, only one service indicated that it exclusively served children and young people. The other 150 provided services to both children and young people and adults.

Of the 151 'care at home' services providing services to children and young people:

- 54 were delivered by private sector providers
- 78 were delivered by third sector providers

The relevant Care Inspectorate data on 'care at home' services for children and young people has been published as an Annex to this consultation document.

Care Inspectorate Datastore figures for December 2024 indicate that there were 1,052 private and third sector 'care at home' services in total registered with the Inspectorate in that month.¹³ This suggests that about 10–15% of 'care at home' services run by private or third sector organisations include children and young people among those they serve.

There is specific legislation governing the provision of care to children, including the Children (Scotland) Act 1995, Residential Establishments – Child Care (Scotland) Regulations 1996 and Looked After Children (Scotland) Regulations 2009.

There are therefore a number of distinctive features in relation to children's services which merit specific consideration being given to their needs when considering extension of FOI law.

4. Do you agree that any extension to private and third sector care home and 'care at home' services should apply to such services when delivered to children and young people (i.e. people under 18 years of age)?

Yes / No / No view

¹³ See [Care Inspectorate - Datastore \(as at 31 December 2024\) Excel with Pivots](#)

5. Are there any issues, opportunities or challenges specific to children and young people’s services which require to be considered? If so, please set out how you see these:

[please insert response here.....]

Responses to this question will be used to assist the development of a Children’s Rights and Wellbeing Impact Assessment.

4.4 Position of smaller providers

As mentioned in the previous section, there is considerable diversity in the scale of private and third sector care services. Care homes range in size from services offering a single registered place, to services offering over 200 registered places.

Some of the smallest services are delivered by larger providers, which run multiple services. According to Care Inspectorate Data, on 31 January 2025 there were 340 care home services offering fewer than 10 registered places. However, many of these were operated by providers operating multiple services.

The following table provides a profile of private and third sector care home providers in Scotland by provider size¹⁴:

Provider size (number of registered places)	Number of providers	Total registered places	Percentage of total registered places
Fewer than 5 places	12	38	0.1%
5-10 places	45	332	0.9%
11-50 places	268	8,187	22%
51-100 places	132	9,109	25%
101-999 places	54	12,349	33%
Over 1000 places	5	6,903	19%
All sizes	516	36,944	100%

The above data suggest that very small providers account for a small percentage of registered care home places, with providers offering 10 or fewer places accounting for only 1% of places. However, providers offering 50 or fewer places account for 23% of places – almost a quarter of the provision in Scotland.

The size profile of ‘care at home’ services is more difficult to map, since many do not report on numbers of places or service users. Staff numbers may therefore be the best available measure by which to compare the relative size of different providers.

Many ‘care at home’ services are also combined with Housing Support Services. Where this is the case, only information about the ‘care at home’ part of the service

¹⁴ [Care Inspectorate Datastore](#) (see: Datastore (as at 31 January 2025) Excel with Pivots)

would become subject to FOISA. However, for such combined services it would be challenging to disaggregate staffing of the 'care at home' part of the service from staffing of the Housing Support Service.

The table below uses data provided by the Scottish Social Services Council (SSSC) to give a size profile of private and third sector 'care at home' providers in Scotland, by staff headcount.¹⁵

Provider size (staff headcount)	Number of providers	Total combined headcount	Percentage of total combined headcount
Fewer than 5 staff	39	102	0.2%
5-10 staff	63	484	1.0%
11-25 staff	166	3,183	6.5%
26-50 staff	101	3,599	7.3%
51-100 staff	88	6,173	12.6%
101-250 staff	65	10,549	21.5%
251-999 staff	30	15,388	31.4%
Over 1000 staff	5	9,600	19.6%
All sizes	557	49,078	100%

The above statistics only provide an approximate overview. They are based on data from December 2023 and count every staff member the same, whether they work full time or part time. Some services did not report on staff headcount, so the numbers might not be completely accurate.

Nevertheless, the data suggests that, as in the care home sector, very small providers account for a small proportion. Providers with 10 or fewer staff account for only 1.2% of staff headcount overall. Providers with fewer than 50 staff account for approximately 15% of staff headcount. Providers with over 250 staff account for 51% of staff headcount in the sector.

Some people have expressed particular concern about the impact of FOI obligations on the resources of providers towards the smaller end of the scale. This may be informed by the following concerns:

- That the resource required to ensure compliance with all aspects of FOISA e.g. maintaining a publication scheme and ensuring relevant systems are in place to handle requests may be disproportionate for smaller organisations, who might generally be expected to receive small numbers of requests about their work.
- That small organisations may face particular challenges in ensuring their staff are adequately trained and prepared to handle requests.
- That in the event that any small provider did attract larger numbers of requests the administrative burden of handling these could be excessive and could divert resources from the delivery of care.
- That data protection requirements may present particular barriers to the release of information about services delivered by organisations which

¹⁵ Figures derived from SSSC Workforce Data - 2023

support only a small number of people (i.e. where release of service level information would implicitly confirm details of an individual's care).

Against these it may be considered that:

- Those who receive care from small providers/others with an interest in the services provided by them should not be disadvantaged in comparison with those who receive care from a relatively larger provider.
 - The experience in other sectors (Registered Social Landlords, primary care) is that request numbers tend to be proportionate to the size and public profile of an organisation.
 - If any small organisation did see a spike in request numbers, this could be for important reasons e.g. a perceived service failure, which ought to be scrutinised.
 - Exempting smaller organisations could create unintended incentive effects for providers to avoid reaching whatever size threshold is set for FOISA to apply
 - FOISA incorporates provisions which may help to protect smaller organisations from excessive burden. These include the right to refuse vexatious, repeat or excessively costly requests and the right to charge limited fees for requests which would cost an organisation over £100 to respond to.¹⁶
 - There are other small organisations which are already subject to FOISA and making distinction between providers based on organisation size would be a departure from all previous practice in relation to extension of FOISA.
6. Do you consider that the size of a private or third sector care home or 'care at home' service provider should have any bearing in whether that provider is made subject to FOISA?

Yes / No / No view

6(a). If you answered 'yes' to question 6, which of the following statements best reflects your views in relation to care home providers?:

- a) Only the very smallest providers, offering services to up to 10 people, should be exempt from FOISA.
- b) Providers offering services to up to 50 people should be exempt from FOISA.
- c) Providers offering services to up to 100 people should be exempt from FOISA.
- d) Only the largest providers, offering services to over 1000 people should be made subject to FOISA.

6(b) If you answered 'yes' to question 6, which of the following best reflects your views in relation to 'care at home' providers?:

- a) Only the very smallest providers, with a staff headcount of up to 10, should be exempt from FOISA.

¹⁶ Authorities may elect to charge fees of 10% of the costs over and above £100, up to a maximum fee of £50 (see: [What might it cost? | Scottish Information Commissioner](#))

- b) Providers with a staff headcount of up to 25 should be exempt from FOISA
- c) Providers with a staff headcount of up to 50 should be exempt from FOISA
- d) Providers with a staff headcount of up to 100 should be exempt from FOISA
- e) Only the largest providers, with a staff headcount of over 1000 should be subject to FOISA.

6(c) Do you have any other comments on the challenges or opportunities that might come from extending FOISA to smaller providers? Please use the space below to set out your views:

[please insert response here.....]

5. Supporting the rollout of any extension

As discussed above, any extension of FOISA would impose new duties on care providers and give people who use care services, and others, new rights to access information about those services.

Providers would be required to adopt the Scottish Information Commissioner's Model Publication Scheme to make the following classes of information about their work proactively available, wherever relevant information is held:

Class 1: About the authority: Information about the authority: who we are, where to find us, how to contact us, how we are managed and our external relations.

Class 2: How we deliver our functions and services: Information about our work, our strategies and policies for delivering our functions and services and information for our service users.

Class 3: How we take decisions and what we have decided: Information about the decisions we take, how we make decisions and how we involve others.

Class 4: What we spend and how we spend it: Information about our strategy for, and management of, financial resources (in sufficient detail to explain how we plan to spend public money and what has actually been spent).

Class 5: How we manage our human, physical and information resources: Information about how we manage our human, physical and information resources.

Class 6: How we procure goods and services from external providers: Information about how we procure goods and services and our contracts with external providers.

Class 7: How we are performing: Information about how we perform as an organisation and how well we deliver our functions and services.

Class 8: Our commercial publications: Information packaged and made available for sale on a commercial basis and sold at market value through a retail outlet e.g., bookshop, museum or research journal.

Class 9: Our open data: The open data we make available as described by the Scottish Government's Open Data Strategy and Resource Pack, available under an open licence

This may have the effect of increasing the information available to the public regarding services.

Also, anyone who wanted more information about a care home or 'care at home' service would have the right to seek that information by making a request to the provider. Requests under FOISA must be made in writing or another recordable form. The provider would then have a duty to consider and respond to that request, providing the relevant information wherever possible, within 20 working days. The provider would also have a duty to advise and assist the requester to help them to obtain the information they are seeking.

If the requester were dissatisfied with the response to their request, they would have the right to ask the provider to carry out a review of its handling of the request. The provider would have an obligation to consider and respond to the review within a further 20 working days.

Following review stage, the requester would have the right to apply to the Scottish Information Commissioner for a decision, if they remained dissatisfied with the provider's handling of their request. The provider would then be required to make submissions to the Commissioner, setting out its position.

In 2024-25 only 3% of FOI requests in Scotland became subject to an internal review and fewer than 1% became the subject of an application to the Commissioner.¹⁷

It should be noted that designation as a Scottish public authority under FOISA also confers obligations under the Climate Change (Scotland) Act 2009. These are intended to be proportionate in their requirements for smaller bodies.¹⁸

Under data protection law, every Scottish public authority is also required to appoint a Data Protection Officer (DPO). The requirement to appoint a DPO is set out in guidance from the (UK) Information Commissioner's Office, which regulates data protection compliance of all organisations in the UK.¹⁹

More generally, Scottish public authorities need to be mindful to ensure compliance with data protection law when they carry out their obligations under FOISA. This includes the need to guard against any inappropriate processing or release of personal data when handling requests. Providers would need to ensure FOISA compliance was integrated with existing data protection obligations under UK GDPR and the Data Protection Act 2018. This would include applying exemptions under FOISA where necessary in order to protect personal data, accurately undertaking any necessary redactions, and maintaining records of decisions to ensure accountability.

Care providers are of course already subject to the requirements of data protection law and should already have processes in place to ensure their compliance. This includes the requirement to comply with requests from data subjects for their own personal data (i.e. subject access requests).

A Business and Regulatory Impact Assessment is being developed to consider the regulatory impact on providers in greater depth. A Data Protection Impact Assessment, to consider the impact on data protection rights and obligations is also being developed.

7. What would be most helpful to assist care providers in discharging their obligations under FOISA? Please provide your thoughts below:

[please insert response here.....]

¹⁷ see [Scottish Information Commissioner 2024-25 Annual Report Annual Accounts](#) (page 29)

¹⁸ see [Public bodies climate change duties: putting them into practice, guidance required by part four of the Climate Change \(Scotland\) Act 2009 - gov.scot](#)

¹⁹ see [Data protection officers | ICO](#)

8. What would be most helpful to people who access social care and other members of the public to enable them to access their rights under FOISA? Please provide your thoughts below:

[please insert response here.....]

9. What categories of information relating to the work of care home and 'care at home' services would people be most likely to seek? Please provide your thoughts below:

[please insert response here.....]

6. Impact Assessments

As mentioned above, a Business and Regulatory Impact Assessment and Data Protection Impact Assessment are being developed. Outcomes from this consultation will feed into the further development of those assessments.

10. Do you have any comments on the business and regulatory impact of FOISA extension for organisations?

[please insert response here.....]

11. Do you have any comments on impact of FOISA extension in relation to the fulfilment of data protection rights and obligations?

[please insert response here.....]

In addition to these the Scottish Government is required to consider the impact of extension on people in Scotland in relation to the protected characteristics under the Equality Act 2010

12. Do you have any comments on how the proposed extension might impact differently, whether positively or negatively, on different people in Scotland in relation to the following characteristics?

- Age.
- Disability (including both physical and mental impairments).
- Gender reassignment.
- Marriage and civil partnership (apply specifically to employment contexts).
- Pregnancy and maternity.
- Race.
- Religion or belief.
- Sex.
- Sexual orientation.

[please insert response here.....]

Evidence from the answers provided to this question will be used to help inform the development of an Equality Impact Assessment.

The Scottish Government is also required to consider impact on Human Rights across all aspects of its policy-making.

13. Do you have any comments on how the proposed extension might impact on the human rights of people in Scotland or beyond?

[please insert response here.....]

Under the Fairer Scotland Duty, the Scottish Government is required to consider how the proposed changes may affect inequalities of outcome caused by socio-economic disadvantage.

14. Do you have any comments on how the proposed extension might impact individuals affected by socio-economic disadvantage?

[please insert response here.....]

Evidence from the answers provided to this question will be used to help inform the development of a Fairer Scotland Duty Assessment.

The Scottish Government is also required to consider the impact of the proposed extension on Children's Rights and Wellbeing, through a dedicated impact assessment. Evidence from responses to questions 4 and 5 will contribute to the development of this.

7. Next steps following this consultation exercise

Following the conclusion of this consultation exercise, and our analysis of the responses the Scottish Government will provide a formal response to the consultation setting out the next steps we intend to take.

Care inspectorate data re 'care at home' services for children and young people

Service Profile - Client Group - Vulnerability/Need Responses, Housing Support Service (Combined) and Support Services 'Care at Home'²⁰

Notes:

- Annual Return data includes services who submitted their Annual Return, and those whose Annual Return was sitting at 70% or higher completed.
- Annual Returns data is submitted from services and the information is not currently validated. It may, therefore, contain inaccuracies.
- Service types are based on our service list as at 31 December 2024, and not necessarily the AR type they received.
- Combined services is an arrangement developed by Care Inspectorate policy, to support providers who offer both a Support Service - Care at Home and Housing Support Service to be considered a combined service.
- Where a Support Service - Care at Home and Housing Support Service are registered with the Care Inspectorate as combined, only the Housing Support Service is required to submit an Annual Return.

Number and proportion of services that completed the service profile question in the 2024 Annual Return, by service type²¹.

Care service/subtype	Number of services registered at 31 December 2024	Number of services that completed the service profile question in the 2024 Annual Return	Proportion of services that completed the service profile question in the 2024 Annual Return
Housing Support Service (Combined)	725	686	94.6%
Support Service/Care at home	514	466	90.7%
Grand Total	1,239	1,152	93.0%

Notes:

- Includes services who submitted their Annual Return, and those whose Annual Return was sitting at 70% or higher completed.
- Services registered after 30 September do not have to submit an annual return.

²⁰ Source: Client_Needs_AR24, 241231DatastoreInternal

²¹ Figures obtained from the Care Inspectorate data - Information on 'Care at Home' service profile.

Number of services that indicated that their service cater for children and Young by care service/subtype²².

Care service / subtype	Children and Young People
Housing Support Service (Combined)	70
Support Service Care at Home	81
Grand Total	151

Notes:

- 70 Housing Support Service (Combined) and 81 Support Services Care at Home, indicated that their service caters for “Children and Young People.”
- Of these 151 services one indicated that “Children and Young People” were the only client group they catered to. 150 services indicated that they catered to two or more client groups.

Number of Individual providers by service type²³.

Service Type	Housing Support Service (Combined)	Support Service Care at Home	Total
Private	21	31	49
Local Authority	7	6	12
Voluntary or Not for Profit	22	29	45
Grand Total	50	66	106

Notes:

- Total is the total number of individual providers, some providers may provide both a Housing Support and Support Service - Care at Home Services.
- Providers can operate multiple services, therefore the number of providers is lower than the number of services.

In total there are 106 individual providers that provided either/both a Housing Support Service or a Support Service Care at Home to Children and Young People. 46.2% (49 providers) of these providers were Private, 42.5% (45 Providers) were Voluntary or Not for Profit, while 11.3% (12 Providers) were Local Authorities.

Housing Support Service – These was a total of 50 individual providers that provided a Housing Support Service to Children and Young People. 44.0% (22 providers) of these providers were Voluntary or Not for Profit, 42.0% (21 Providers) were Private, while 14.0% (7 Providers) were Local Authorities.

Support Service Care at Home – These was a total of 66 individual providers that provided a Support Service Care at Home to Children and Young People. 47.0% (31

²² Figures obtained from the Care Inspectorate data - Information on ‘Care at Home’ service profile.

²³ Figures obtained from the Care Inspectorate data - Information on ‘Care at Home’ service profile.

providers) of these providers were Private, 43.9% (29 Providers) were Voluntary or Not for Profit, while 9.1% (6 Providers) were Local Authorities

Responding to this consultation

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space. Access and respond to this consultation online at [Extension of FOISA in the care sector - Scottish Government consultations - Citizen Space](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **30 March 2026**.

If you are unable to respond using our consultation hub, please complete and send the Respondent Information Form to:

Freedom of Information Unit
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG.

Email: foiconsultation@gov.scot

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form provided alongside this document.

To find out how we handle your personal data you can view the privacy policy here: [Privacy - gov.scot \(www.gov.scot\)](#)

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public at [Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or email above.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: [Citizen Space](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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