

FREEDOM OF INFORMATION:

(MEETING WITH PASCHAL DONOHUE TD, Minister for Public Expenditure and Reform)

This is a general meeting to discuss FOI policy. Some background to FOI in Ireland is set out later in this note, along with a list of Scottish FOI principles.

Annex to Note 4 covers the following supplementary background on FOI matters:

- **EXTRACT OF FOI CONFERENCE SPEECH BY PASCHAL DONOHUE (30 MARCH 2017)**
Freedom of Information – a key enabler of Political Reform in Ireland
- **ORGANISATIONS SUBJECT TO IRISH FOI LEGISLATION**
- **IRISH INFORMATION COMMISSIONER ANNUAL REPORT (2015) – KEY POINTS**
- **SCOTTISH GOVERNMENT AND SCOTTISH INFORMATION COMMISSIONER ANNUAL REPORTS (2015) - KEY POINTS**

The following paragraphs offer some possible issues to raise with Mr Donohoe.

POSSIBLE ISSUES FOR DISCUSSION**Legislative change**

The Scottish Government seeks to ensure Scotland's Freedom of Information legislation remains robust and up-to-date. The Freedom of Information (Scotland) Amendment Act 2013 revised the legislation by strengthening the ability to prosecute in the event of an offence e.g. destroying, concealing information etc; introducing a statutory duty to report on extension of coverage of the legislation and paving the way to reduce the lifespan of key exemptions.

You may wish to ask:

Ireland's FOI legislation has been subject of substantial revision (most recently resulting in the Freedom of Information Act 2014). What were the key drivers for these changes – and what has the impact been?

Coverage

The Scottish Government has adopted an incremental approach to extending coverage of FOI. Bodies now covered include certain arm's length trusts providing cultural, leisure and sporting services; private prison contractors and providers of secure accommodation for children. Consultation has also recently concluded on extending FOI to registered social landlords.

You may wish to ask:

The Scottish Government seeks to keep coverage of FOI legislation 'up-to-date' by ensuring new public bodies are subject to FOI and extending to others undertaking 'functions of a public nature' - defined by a range of factors e.g. statutory underpinning, public funding, degree of regulation etc. What is the approach taken to maintaining, reviewing and revising coverage in Ireland?

Performance

The Scottish Government is constantly seeking to improve its FOI performance – through guidance, training, reporting, records management systems etc.

You may wish to ask:

Are there performance challenges for Irish Government Departments – and how are they tackled?

Culture

Research shows a high level awareness of FOI in Scotland (85%). The legislation is rigorously promoted and enforced by the Scottish Information Commissioner. The UK Information Commissioner has also spoken of the need to legislate for a 'duty to document' (against a background of key decisions/meetings being unrecorded)

You may wish to ask:

What are the current challenges facing FOI in Ireland, for example, how embedded is a culture of openness and transparency within public bodies?

IRISH FREEDOM OF INFORMATION LEGISLATION – BACKGROUND

On 14 October 2014, the Freedom of Information Act 2014 came into effect repealing earlier Acts of 1997 and 2003. The Act was intended to restore Ireland's FOI regime to the '*top tier of legal frameworks internationally for facilitating access to official information*' (Brendan Howlin, then Minister for Public Expenditure and Reform)

The new Act introduced a number of changes to the Freedom of Information scheme and widened the range of bodies to which the FOI legislation applies to all public bodies, unless specifically exempt.

It also allows for the Government to prescribe [by order] other bodies receiving significant public funds, so that the FOI legislation applies to them as well.

The Freedom of Information Act 2014 provides the following statutory rights:

- A legal right for each person to access information held by a body to which FOI legislation applies
- A legal right for each person to have official information relating to himself/herself amended where it is incomplete, incorrect or misleading
- A legal right to obtain reasons for decisions affecting himself/herself.
- The Freedom of Information Act 2014 also included a key innovation relating to the publication of information without the need for FOI requests. The Act requires all FOI bodies to prepare and publish their own publication schemes, which will include details about the body, the services it provides, decision making processes for major policy proposals, financial information, procurement information and an FOI Disclosure Log.
- Section 27 of the Freedom of Information Act 2014 provides for fees and charges (reduced from those controversially introduced under the 2003 Act – including for an initial request). To request information is now free. However, a review costs €30 with an appeal to the Information Commissioner costing €50.
- Requests must be responded to in 4 weeks (with a 4 week extension possible).

Current policy is that commercial State bodies (with some exceptions) are not subject to FOI legislation. This is to take into account the potential for negative commercial effects on their competitive standing to safeguard the State's economic and financial interests. **Exceptions** are:

- **Irish Rail** (operator of the national railway network of Ireland)
- **ESB Networks** (licensed operators of the electricity distribution system)
- **Gas Networks Ireland** (own, operate, build and maintain the natural gas network)
- **Eirgrid** (manages and operates the transmission grid across Ireland)

THE SCOTTISH GOVERNMENT'S SIX PRINCIPLES OF FOI

The Scottish Government:

1. Supports Freedom of Information as an essential part of open democratic government and responsive public services.

The Freedom of Information (Scotland) Act 2002 provides significant and important rights to access information. We support the Act's underpinning principles by encouraging behaviour which is open, transparent and increases public participation.

2. Operates within the Freedom of Information (Scotland) Act 2002 rather than propose significant changes to it, but adjusts the regime where it is necessary and sensible to do so.

The Act must operate well for both members of the public and Scottish public authorities. We will keep the Act under review by promoting good practice within existing frameworks and considering extending coverage.

3. Publishes information proactively wherever possible.

We will publicly demonstrate our commitment to open government and Freedom of Information by ensuring as much information as possible is made available without having to be asked.

4. Maintains the exemptions set out in the Act in particular to protect "private space" for Ministers and others to consider advice and reach decisions.

The Act provides for responsible openness. We will use the exemptions in the Act where appropriate to protect for instance the formulation or development of policy, Ministerial communications, or the uninhibited provision of advice.

5. Maintains effective relationships with the Scottish Information Commissioner and other key stakeholders.

We ensure the effective operation of the Act by fostering and maintaining good working relationships on Freedom of Information with stakeholders such as other public authorities and the Scottish Public Information Forum.

6. Creates and shares information thoughtfully with regard to the principles above.

To support the effective application of the Act, we create and share information thoughtfully, deliberately and purposefully with a view to upholding the principles above.

SG: Freedom of Information Unit
April 2017

EXTRACT OF FOI CONFERENCE SPEECH BY PASCHAL DONOHOE (30 MARCH 2017)

Freedom of Information – a key enabler of Political Reform in Ireland

TRUST AND REFORM

Personally, I feel that FOI has made a real, tangible, contribution to the work this Government has been doing in the area of reform.

The Act has certainly been used to good effect, particularly by the media, to uncover cases of maladministration and poor governance.

As such FOI plays an important role in delivering open, accountable and ethical government and in rebuilding public trust.

The economic crisis in recent years has had an impact on public trust and confidence in public administration.

The Public Sector Trends Report 2016, recently published by the Institute of Public Administration included the findings that Ireland remains sixth in the EU28 in upholding public service values.

However, while levels of trust continue to remain low, the position has improved across most of the indicators in 2016 – notably in that “Trust in Government” has slowly increased since 2013, with 28% now saying they tended to trust the Government, just above the EU average of 27%.

Part of this increase is I hope down to the fact that, in addition to the work of the Government in seeking to ensure economic recovery, a very substantial programme of legislative reforms has been and continues to be delivered.

In addition to FOI, significant reforms have been implemented in areas such as Oireachtas Inquiries, Protected Disclosures, Lobbying, and the scope and powers of the Ombudsman.

Furthermore, the Public Sector Standards Bill is currently progressing through the Oireachtas and drafting of a Data Sharing and Governance Bill is well underway.

Other achievements include the development of a Corporate Governance Standard for the Civil Service, the introduction of an open and transparent system for State Boards Appointments, and the Open Data Initiative which involves the publication of official non-personal data in open format so that potential economic and social benefits may be realised.

We are also participating in the multi-lateral Open Government Partnership initiative to promote transparency and strengthen governance.

It might interest you to know that Ireland has ranked very highly in a report published by the European Portal on how European countries have developed their Open Data Maturity since 2015 and scored overall third place in terms of Open Data Maturity Assessment across the 28 European Union countries assessed, which is a terrific achievement.

FREEDOM OF INFORMATION ACT 2014

Specifically on Freedom of Information, in past reports, the Information Commissioner has detailed some of the very significant achievements of the Act over the years and highlighted areas of public policy where FOI was instrumental in bringing vital issues of public concern into the public domain.

Indeed one of the most often highlighted benefits of FOI is its role in helping to improve the contestability of policy advice and the degree to which policy advice is fully informed and evidence-based.

I think it is valuable that people realise the level of consideration and debate that goes into the process of policy-making.

Developing the Act provided an excellent opportunity to plot the course for the future growth and further deepening of a positive culture for FOI.

The fundamental purpose of FOI is summarised in the long title of the Act as follows:-

“to enable members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy to information in the possession of public bodies”

This precisely expresses the high level of ambition we should hold for FOI and is what we aimed to do in the Act.

It established a modernised, consolidated, restructured and more accessible FOI framework.

Two key features are that it restored the Act to its 1997 origins and it extended FOI to almost all public bodies.

As new public bodies are established, they will automatically be subject to FOI, unless specifically exempted and the scope of the Act now covers some 600 public bodies.

This means that a much wider portion of the public service has come under FOI and has allowed for increased examination of how public bodies are operating.

Earlier, I alluded to the ability of FOI to provide an insight into public policy-making – “a look behind the curtain” perhaps, and certainly it seems that many of the investigations and stories revealed through our media are accompanied by the phrase “released under freedom of information”.

The Act also included a key innovation relating to the publication of information without the need for FOI requests.

A Model Publication Scheme along with guidance has been developed which commits bodies to make information about their organisations and their operations publicly available as part of their normal business activities.

Encouraging public bodies to build on this innovation and look at ways of publishing more information in a regular fashion should be an aim in future years.

This will not only increase the information made available to the public but should result in a reduced level of actual requests.

CHALLENGES AND SUPPORTS

I mention the issue of a reduced level of requests because the implementation of FOI is not without its challenges for public bodies.

The broadening of the scope to cover more bodies, the option to make requests via email and the elimination of an up-front fee have been viewed as the primary drivers of the increase in requests – the overall number of requests is now at around 30,000 a year, a trebling in ten years.

This has meant that the bodies, particularly those brought into the scope since 2014, must come to terms with operating under the revised system and become familiar with dealing with requests.

Given the relatively small size of some bodies and sometimes infrequency of requests many new bodies may still be coming to grips with the complexities of the legislation, with the challenging timelines for complying with the various provisions and with the increased resource implications.

The Office of the Information Commissioner is also represented here this morning and Roisín Connolly will be setting out its view on best practice by bodies but also areas for improvement.

You will also get the perspective of other stakeholders, including requestors, on their experiences with the process.

But certainly I can reassure you that my Department will continue to focus on providing supports and guidance to help FOI bodies deal with requests appropriately and efficiently.

Among the supports provided to date is a Code of Practice, developed to promote best practice among public bodies as well as manuals, guidance notes, an active helpdesk and sample letters.

However, we must always be cognisant of changes in other areas which could impact on the operation of FOI – a notable one being the coming into effect of the EU General Data Protection Regulation next year.

I will be considering the new requirements under the regulation which will be required to ensure that the FOI and Data Protection Systems can operate effectively in parallel.

END

ORGANISATIONS SUBJECT TO IRISH FOI LEGISLATION

Under the 2014 Act, all bodies that conform to the definition in Section 6(1) of the Act are subject to FOI, unless they are specifically exempt, in whole or in part:

- 6(1)(a) a Department of State;
- (b) an entity established by or under any enactment (other than the Companies Acts);
- (c) any other entity established (other than under the Companies Acts) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Companies Acts) by a Minister of the Government under any scheme;
- (d) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government;
- (e) a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (d) relates;
- (f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates;
- (g) a higher education institution in receipt of public funding;
- (h) notwithstanding the repeal of the Act of 1997 by section 5 , and subject to this Act, any entity that was a public body (including bodies or elements of bodies prescribed as such) within the meaning of the Act of 1997 on the enactment of this Act.

The types of bodies that are subject to FOI under the Act, in whole or in part, are:

- Governments Departments and agencies under the remit of Government Departments,
- An Garda Siochana (Ireland's National Police Service)
- Local Authorities
- Education and Training Boards
- Health Service Executive
- Voluntary Hospitals
- Universities and other higher education institutions
- Regulators, such as the Commission for Energy Regulation, the Commission for Communications Regulation
- National Treasury Management Authority and its subsidiary bodies
- Central Bank of Ireland
- Refugee and asylum seekers bodies, such as the Office of the Refugee Applications Commissioner and the Refugee Appeals Board;
- Commercial State Companies operating in a monopoly market, such as Irish Water, Irish Rail and those undertaking energy network functions.

ANNEX TO NOTE 4 (FOI)

IRISH INFORMATION COMMISSIONER ANNUAL REPORT (2015) – KEY POINTS

Total number of requests received by public bodies in 2015 was 27,989 - an increase of 38% on the number received in 2014.

The largest year-on-year increase in requests made to public bodies since 1999 in all likelihood due to a combination of the elimination of up-front fees for making FOI requests and the additional bodies that came within the scope of the FOI Act from April 2015 and beyond.

Type of requester to public bodies

- Clients of public bodies - 56%
- Journalists - 20%
- Others - 15%
- Business - 4.5%
- Staff of public bodies - 3%
- Oireachtas members - 1.5%

Release rates by public bodies

- Granted in full - 54%
- Part-granted - 23%
- Refused - 12%
- Withdrawn - 5%
- Handled outside FOI - 4%
- Transferred - 2%

Sectoral breakdown of FOI requests to public bodies

- Govt. Depts. and State Bodies - 42%
- Health Service Executive - 29%
- Voluntary Hospitals, Mental Health Services and Related Agencies - 14.5%
- Local Authorities - 11%
- Third Level Institutions - 3%
- Other Voluntary Bodies - 0.5%

**SCOTTISH GOVERNMENT AND SCOTTISH INFORMATION COMMISSIONER ANNUAL REPORTS (2015)
- KEY POINTS**

Scottish Government data

- 2,155 requests for information received – the highest on record so far
- 1,780 requests (83%) responded to on time
- 213 applicants requested an internal review - 85% responded to on time
- 50 appeals to the Scottish Information Commissioner
- 71% of Commissioner Decisions regarding the SG/Agencies were upheld in full or in part
- Information released in response to 68% of requests

Composition of Applicants

- Elected representative – 4%
- Individual – 50%
- Media – 20%
- Organisation – 14%
- Other – 1%
- Researcher – 6%
- Solicitor – 5%

Scottish Information Commissioner data (2015/16)

- 61% of appeals from the public
- 20% of appeals from the media
- 68,156 requests made in 2015/16
- 85% public awareness of FOI (highest ever recorded)
- 15% of appeals concern SG/Agencies

The Commissioner notes the greatest challenges as being:

- Resource availability: funding, skills and infrastructure - both directly in relation to FOI, and in supporting areas such as information management, digital skills and citizen engagement.
- Fluctuations in work volumes: the volume of FOI requests is largely outside public authorities' control. [The Commissioner] works with citizens and authorities to lever greater value out of FOI resources through more positive engagement and proactive publication.
- Attitudes and culture towards openness and accountability of public services: to convince public authorities in Scotland that an open culture is not a luxury - it is essential.

OPEN GOVERNMENT:

(MEETING WITH PASCHAL DONOHOE TD, Minister for Public Expenditure and Reform)

This is a general meeting to discuss policy on Open Government. This note offers potential issues to discuss with Mr Donohoe.

OPEN GOVERNMENT PARTNERSHIP: PIONEER PROGRAMMETOP LINES:

In April 2016 Scotland was selected by the OGP as one of 15 Pioneer governments around the world to join a programme to bring new leadership and innovation into the OGP at all levels of government.

We are keen to learn from the Irish experience of developing their second National Action Plan and share learning, particularly around encouraging citizen participation.

The Scottish Action Plan, launched in December 2016, sets out how we will use the opportunity of being Pioneers to improve the lives of people living in Scotland, to learn from others and to share our experience of Open Government.

The five commitments laid out in the Scottish Plan aim to help people living in Scotland to better understand how government works so that they can have real influence and more effectively hold government to account. The commitments also support the development of newly devolved responsibilities such as Scotland's significant tax, borrowing and welfare responsibilities.

1. **Financial Transparency:** to clearly explain how public finances work, so people can understand how money flows into and out of the Scottish Government, to support public spending in Scotland
2. **Measure Scotland's progress:** by making understandable information available through the National Performance Framework, which will be reviewed to reflect our commitments to Human Rights and the Sustainable Development Goals
3. **Deliver a Fairer Scotland:** through implementation of the Actions developed with civil society in the Fairer Scotland action plan
4. **Participatory budgeting:** to empower communities through direct action ensuring they have influence over setting budget priorities
5. **Increasing participation:** improving citizen participation in local democracy and developing skills to make sure public services are designed with input from users and with user needs to the fore

Discussion Points:

The Scottish Open Government Action Plan has been developed in partnership with the civil society Open Government Network, coordinated by Scottish Council for Voluntary Organisations. **We understand Ireland has gone through a different mechanism of engaging with Civil Society and directly with citizens and would like to hear more about their processes for developing their plan.**

The Irish plan commits to undertake a feasibility study on possible means of enabling further citizen engagement in local authority budgetary processes. **SG officials are in contact with Irish counterparts to share learning from our experience of participatory budgeting and will continue to work together.**

The Scottish plan also recognises the importance of Public Records in support of Open Government and commits to continuous improvement under the Public Records Scotland Act. The Irish NAP proposes a Public Service Records Management Plan to facilitate coherent and comprehensive records management in the Public Service that will assist Public Service bodies in carrying out their functions effectively in addition to supporting the requirements of National Archives, Freedom of Information and Data Protection legislation.

Background: Ireland's OGP National Action Plan

Ireland has published its second National Action Plan, covering the period to June 2018, it sets out commitments across four themes:

1. **Increased Citizen Engagement**, to improve policies and services
2. **Increased Transparency**, to better understand government activities and decisions
3. **Open Data**, for transparency and innovation
4. **Anti-Corruption and Strengthened Governance and Accountability**, to ensure integrity in public life

NAP Commitments

- Commitment 1: Promote Transparent Climate Policy Development
- Commitment 2: Support Public Participation Networks
- Commitment 3: Improve Access to Justice
- Commitment 4: Enhance Citizen Engagement in Policy Making
- Commitment 5: Enhance Customer Engagement
- Commitment 6: Improve Access To Government Services Through Technology
- Commitment 7: Participatory Budgeting
- Commitment 8: Improve Transparency of Government Service Providers
- Commitment 9: Enhance Fiscal Transparency
- Commitment 10: Introduce Modern Document Management Procedures
- Commitment 11: Develop an Open Data Strategy 2017-2020
- Commitment 12: Invest in Data Infrastructure that will result in better Open Data
- Commitment 13: Develop a Code of Practice for the Governance of Charities

Commitment 14: Strengthen Anti-Corruption Measures

Commitment 15: Establish a Register of Beneficial Ownership

OGP BACKGROUND

The **Open Government Partnership (OGP)**;

- was set up in 2011 with 8 member countries, there are now 75
- provides a mechanism for civil society and governments to agree commitments that promote transparency, empower citizens, fight corruption, and harness new technologies.
- agenda is consistent with commitments in the Programme for Government on protecting and improving public services and increasing citizen participation.
- principles cover mostly devolved issues and often impact in areas where we have taken a distinct approach to the UK Government. Scotland is continuing to work with the other governments in the UK on open government, but we have a distinctive story to tell.

Scotland is one of fifteen governments around the world who are working together and with the Open Government Partnership in the Pioneer Programme as a devolved government, along with regional and local government, municipalities and major cities to bring in new political leadership and open government innovation.

The other Pioneers are: Austin, United States; Bojonegoro, Indonesia; Buenos Aires, Argentina; Elgeyo Marakwet, Kenya; Jalisco, Mexico; Kigoma, Tanzania; La Libertad, Peru; Madrid, Spain; Ontario, Canada; Paris, France; Sao Paulo, Brazil; Sekondi-Takoradi, Ghana; Seoul, South Korea; Tbilisi, Georgia.

OGP Pioneer Programme – Background

Since its launch in 2011 OGP has worked with its 70 national government participants to develop over 100 action plans with over 2,500 specific reform commitments to open up government. These governments are using OGP to engage in peer learning and exchange with counterparts around the world, enabling the spread of new ideas and solutions to public policy challenges. OGP requires civil society organizations to be included in the co-creation of the reform commitments, meaning governments are also experimenting with new forms of open policy-making.

The **objectives of the pilot program** are to:

- Foster more diverse political leadership and commitment from different levels of government to OGP and to hold governments accountable at a local level, where many citizens are directly accessing services and information.
- Learn how OGP can best support subnational governments in making their regions more open, accountable and responsive to their citizens and determine the best structure for subnational participation in OGP.
- Discover and promote new and innovative open government techniques and practices emerging at the subnational level around the world.

- Create practical opportunities for subnational governments to learn from each other, share experiences, and build upon the open government work of their counterparts.
- Support and empower subnational government reformers with technical expertise and inspiration and create the right conditions and incentives for them to make concrete commitments to open government.
- Broaden and deepen participation of civil society organizations (CSOs) in OGP.

During the pilot program the commitments and short action plans developed by the pioneers will be assessed by OGP's Independent Reporting Mechanism (IRM). The pilot will give OGP the opportunity to test and assess the IRM's capacity to act as the accountability mechanism for subnational government participation.

BACKGROUND: PARTICIPATORY BUDGETING

Participatory Budgeting (PB) is recognised internationally as a way for local people to have a direct say in how, and where, public funds can be used to address local needs. It originated in Porto Alegre, Brazil in the late 1980s and has since spread to over 2,000 localities around the world. PB was born from a desire to reallocate public money locally and democratically to where it was needed most. Used well, it can help individuals feel connected to each other and to their communities and can instil a sense of ownership, trust and connectivity.

The Scottish Government (SG) refers to PB as Community Choices. There is no difference except that community choices is an easier way to talk about PB. It is essentially about the involvement of people and communities in a financial decision making process.

Scottish Government Support for PB

The SG supports PB as a tool for community engagement which sits alongside the objectives of the Community Empowerment (Scotland) Act 2015 and as an important resource to build on the wider development of participatory democracy in Scotland. Since June 2014 the SG has been raising awareness of PB and setting the conditions for it to be delivered in a meaningful and sustainable way across Scotland. Up to February 2016 when the Community Choices Fund was announced, the support had focused primarily on local authorities and included producing learning resources and launching a PB website, as well as funding consultancy support for local authorities, providing match funding, purchasing digital engagement tools and funding an evaluation programme.

Significant developments are:

- **International Conference** – A two day international PB conference was held in Edinburgh on 20/21 October 2016 which brought more than 200 people together across two days to learn more about PB and how it can help shape democracy in Scotland and beyond. The keynote speech was provided by the Deputy Mayor of Paris, Pauline Veron and delegates from nine countries attended, France, Portugal, Denmark, Catalonia, Iceland, Sweden, America, China, Kenya plus delegates from the UK.
- **PB Consultancy Support October 2016** - funded consultancy support offered to the 12 Local Authorities who had not taken up the offer in 2015/16. These are Clackmannanshire, Dumfries & Galloway, Dundee, East Dunbartonshire, East

Lothian, East Renfrewshire, Falkirk, Inverclyde, North Lanarkshire, Renfrewshire, Borders, Stirling. Also 2 days fully funded consultancy support offered to the 20 local authorities already engaged in PB activity but for those interested in PB mainstreaming only.

- **Programme for Government 2016/17** (7 September 2016) "We will continue to work with local government and communities on delivery of the target of councils having at least 1% of their budget subject to Community Choices budgeting, backed by the £2 million Community Choices Fund which opened for applications in June 2016 to support public authorities and community groups build on examples of best practice. This means that tens of thousands of people will have a direct say in how tens of millions of pounds are spent by their councils and will be involved in innovative community action. We are determined to give people a real voice in the decisions that matter to them and be a world leader in promoting community choices in budget decisions."
- **Manifesto commitment** (May 2016) - 'Setting councils a target of having at least 1 per cent of their budget subject to Community Choices budgeting. This will be backed by the Community Choices Fund to help public bodies and community groups build on examples of best practice'.
- **£2 million Community Choices Fund** – £1.5 million of the fund was open in June 2016 for public authorities (£750k) and community organisations & community councils (£750k). A total of 137 applications were received to the sum of £7,097,287. Of those 23 were from public authorities totaling £1,322,385 and 114 from community organisations totaling £5,774,902. In September 2016, a total of 28 applicants were funded, 12 public authorities and 16 Community Organisations and Community Councils. These applications are targeted at engaging local communities with a particular focus on disadvantaged areas experiencing social and economic inequalities.
- **Community Choices Fund Impact Accelerator** - £200k has also been allocated to two further public authorities, two community groups and the Church of Scotland. These innovative proposals to work in areas of deprivation include: promoting Gaelic; co-production with a homelessness network; supporting family units; working with people with learning difficulties; and promote PB in economically poor urban and rural communities to engage in and develop their skills in PB. The learning from these projects could help inform the allocation of any future PB funding to tackle inequality.
- **National Support Programme for 2016/17** – £300k of the Community Choices Fund will also fund on-going consultancy support, digital engagement tools, an evaluation programme, the PB website, support for community organisations, the establishment of a network, a capacity building programme, more learning resources and the international conference.
- **£530,000 Match Funding and Support** - In January 2016 the SG provided match funding and support to 14 local authorities to help them build on and maintain their PB activity. Between January and June 2016 over 4000 people attended around 50

PB events involving hundreds of community groups. More than £1 million has been distributed democratically by local people.

- **The Community Empowerment (Scotland) Act 2015** - includes a new regulation-making power which will enable Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public, in the decisions and activities of the authority, including in the allocation of its resources. The legislation does not refer specifically to PB but it will be one of the tools used in the allocation of resources.
- **PB Working Group** - This work is supported by Fiona Garven, Scottish Community Development Centre (SCDC); Angus Hardie, Scottish Community Alliance; Dr. Oliver Escobar, University of Edinburgh; Martin Johnstone, Church of and Society Council, Ruchir Shah, Scottish Council for Voluntary Organisations, Alistair Stoddart, Democratic Society and Anil Gupta, COSLA.

Background: The Public Records (Scotland) Act 2011

Top Lines

The Public Records (Scotland) Act 2011 (the Act) was implemented on 1 January 2013. The primary aim of the Act is to improve the quality of record keeping by named public authorities in Scotland.

Scottish Ministers legislated on public records following publication of the Historical Abuse Systemic Review, or Shaw Report, published in 2007. The Shaw Report investigated the regulatory framework for residential schools and children's homes, set against a backdrop of abuse suffered by the children who stayed in them. It found a series of failings and reported how its own investigations were hampered by poor record keeping across the sector. It identified thousands of records as having been created but then destroyed, or lost, due to inadequacies in the law and poor records management.

Evidence of wider record keeping failures across the public sector was further demonstrated by a review of public records legislation conducted by the Keeper of the Records of Scotland (the Keeper) at the request of Ministers and completed in 2009. Ministers then consulted on proposals for new legislation and a Bill was introduced to Parliament in October 2010. It achieved the unanimous support of Parliament and was passed in March 2011.

The Act helps authorities to safeguard and prioritise public records as a guarantor of the rights of Scottish citizens. It requires them to prepare, implement and keep under review a records management plan which sets out clear arrangements for the management of public records, whether created or held by an authority. The plan must be submitted to the Keeper for assessment within an agreed time frame.

Regulation under the Act is the responsibility of the Keeper.

General records management benefits

- Records and information allow citizens to hold government to account; they promote openness, support justice and equality and help guarantee our rights as citizens of Scotland. Effectively, records help protect our democracy.
- Good records management makes public bodies more accountable, leads to greater efficiency, supports effective administration and facilitates collaboration and joint working.
- Good quality, trustworthy and credible data is dependent on robust information management and this is critical to the effectiveness and long term credibility of the Open Government agenda.
- Good quality data and efficient information management are critical to maximizing the benefits of Big Data and supporting data innovation.

PRSA, engagement and cultural change

- Historical Abuse Systemic Review, or Shaw Report, published in 2007 and the Keeper's review of public records legislation in Scotland, published in 2009, demonstrated that existing legislation was no longer fit for purpose and was, in fact, a barrier to good records management.
- The Public Records (Scotland) Act 2011 ensures that public authorities have effective records management arrangements in place to ensure they operate as efficiently and openly as possible, and that they safeguard and prioritise public records as a guarantor of the rights of Scottish citizens
- Having an agreed Records Management Plan does not necessarily indicate that an authority is fully compliant with the legislation. It means the Keeper is satisfied that where its arrangements are not compliant it has identified gaps in provision and provided evidence of a commitment to close these, by what measures and under what timescales.
- The Act is about building trust with stakeholders and citizens. It's about helping public authorities to improve over time, to build solutions that secure improvements over the longer-term. In this way the Act will change the culture around record keeping in Scotland.
- The Keeper has to date agreed records management plans covering 132 public authorities and issued 198 invitations to authorities to submit a plan. This is strong evidence that the Act is working.
- The evidence submitted by public authorities under their plans indicates tangible improvements to record keeping practice under the Act. It is no longer viewed as a back room activity, but recognised as essential to help support better governance and improve public services.
- Plans agreed under improvement provide further evidence of the development of a more open and transparent culture. Authorities are also publishing their plans and this is again evidence of a growing transparency and a willingness to share.
- Success for the Act cannot be measured in the short term. It needs to be assessed over a much longer period, by a process of continuous assessment and improvement that will help bring about lasting change. The Act will ensure that good records

management is embedded within the culture of Scotland's public authorities and remains relevant, with a much higher profile than it ever had before.

Challenges

- It is challenging to implement new legislation and encourage new ways of working and thinking in the public sector at a time of austerity. This has been largely overcome by the Keeper making himself very visible to authorities, engaging meaningfully to help, and by assuring them that this is not about creating new information; rather it is about managing better that which they already, or in the future, will routinely create. And, by pointing to the potential benefits of so doing.
- Good records management may not be cheap, but it is cheaper than poor records management or no records management.

BIOGRAPHICAL NOTES

PASCHAL DONOHOE TD,
MINISTER FOR PUBLIC EXPENDITURE AND REFORM



Paschal was **appointed Minister of Public Expenditure and Reform on 6 May 2016**. He previously served as Minister of Transport, Tourism and Sport from July 2014 to May 2016. He was the Minister of State for European Affairs at the Department of the Taoiseach and Foreign Affairs and Trade from July 2013 to July 2014.

He was elected to the Dail in February 2011 and was previously elected to Seanad Eireann in 2007 where he was the **Fine Gael** Seanad Spokesperson on Transport.

Paschal was a member of Dublin City Council from 2004 to 2007. He was educated at St Declan's CBS, Cabra and Trinity College, Dublin. After graduation he worked in the UK and Ireland and became the **Sales & Marketing** Director for a multinational company. Paschal is married with two young children and lives in Shandon Park, Phibsborough.