

PARLIAMENTARY GUIDANCE NOTES - CONTACTS WITH MEMBERS OF THE SCOTTISH PARLIAMENT (MSPs) AND SPICe

FOR: SG officials who seek background on how to engage with Members of the Scottish Parliament (MSPs) or the Scottish Parliament Information Centre (SPICe).

KEY POINTS:

- The Civil Service Code states clearly that **the constitutional and practical role of the Civil Service is to assist the duly constituted government of the day - in our case the Scottish Government - in formulating its policies.** Colleagues should therefore avoid responding to MSPs in any manner that could be interpreted as contributing to policy formulation or development.

- **Civil servants may generally provide only factual information or factual briefing to MSPs, of whatever political party. Written requests for such information should be handled in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA), or the Environmental Information (Scotland) Regulations 2004 (EIRs) if the information is 'environmental' – see the [FOI SharePoint site](#). Direct approaches to civil servants (as opposed to Ministers) are expected to be the exception rather than the rule.**

- **Requests about the merits of Government policy or alternative approaches must be addressed to the relevant Minister.**

- **Ensure your Ministers are made aware of any requests received from MSPs or their personal staff.**

- **SPICe provides research, information and documentation services to the Scottish Parliament. It assists MSPs, their staff, committees and the staff of the Parliament to secure expert information and briefing for their parliamentary duties.** A 'business as usual approach' should usually be taken with information requests from SPICe, instead of responding formally under FOISA/EIRs.

- **in responding to any requests from MSPs or SPICe colleagues should:**
 - make their Branch Head aware of the request so that decisions on handling and who is best placed to respond can be taken.
 - respond positively and timeously.
 - provide the information requested as fully and accurately as possible, but avoid being drawn into debate on the merits of policy options. Colleagues should always supply factual information or briefing, as they would to any other external stakeholder.
 - alert their Minister to any requests from MSPs or SPICe that are relevant to their portfolio interests.

KEY CONTACTS:

[Redacted]

Introduction

1. This note offers guidance to colleagues on how to handle direct approaches from MSPs, their personal staff or the Scottish Parliament Information Centre (SPICe) for information or advice.

2. In any such contacts, civil servants need to bear in mind their constitutional position. The Civil Service Code states clearly that the constitutional and practical role of the Civil Service is to assist the duly constituted government of the day - in our case the Scottish Government - in formulating its policies. Colleagues should therefore avoid responding to such requests in a manner that could be interpreted as contributing to policy formulation or development. **It would be a clear breach of the Code were civil servants simultaneously to assist opposition parties, through SPICe or by any other means, in the formulation or development of their policies.**

3. In any direct or indirect contacts with MSPs who are not Scottish Ministers, civil servants must avoid either suggesting or commenting on policy options, or engaging in debate about the merits of the Scottish Government's policies. **Civil servants may generally provide only factual information or factual briefing to MSPs, of whatever political party.**

MSPs access to Government information

4. There are a number of ways in which MSPs can obtain information on Government policy and activity, including answers to Parliamentary questions, via correspondence, publications, the Government website and briefing sessions. The quickest and most straightforward way of ensuring that MSPs have access to Scottish Government publications is by proactively providing material to SPICe. Procedures for this are set out in the separate Parliamentary Guidance Note *Laying Documents in the Parliament*. **Direct approaches to civil servants are, therefore, expected to be the exception rather than the rule.**

5. However, there may be circumstances in which an MSP is seeking information sometimes urgently, perhaps on behalf of a constituent or the wider community, but has been unable to obtain it from another source. This raises the possibility of a direct approach being made to the Government, in the same way as any other external stakeholder or member of the public. **A written request for recorded information is an FOI request and must be handled in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA), or the Environmental Information (Scotland) Regulations 2004 (EIRs) if the request is for 'environmental information' – see paragraphs 9 and 10 below.**

What is SPICe?

6. **SPICe provides research, information and documentation services to the Scottish Parliament. It assists MSPs, their staff, committees and the staff of the Parliament to secure expert information and briefing for their parliamentary duties.** SPICe staff are employed by the Scottish Parliamentary Corporate Body (SPCB) and are part of the Parliamentary Service (i.e. they are not civil servants). They work confidentially and impartially for the Parliament and its Members. They should not be confused with the "political" researchers and other staff of individual MSPs, or parties within or outwith Parliament.

7. SPICe Research Services possess subject expertise in relevant (primarily devolved) areas. **Briefing papers are produced on all Bills, major issues relating to forthcoming parliamentary business, public petitions and other subjects of topical interest. All of these briefings are available on the Parliament's website.** SPICe Information Services are the frontline for handling enquiries from MSPs, their staff and parliamentary staff, and also

compile factsheets of reference information on parliamentary and other related issues, again all available on the website.

8. The more relevant information that SPICe holds, the better the service that it will be able to provide to MSPs who may, in turn, be less likely to need to approach the Scottish Government direct for information - either by lodging a Parliamentary Question or by other means such as an FOI request. Colleagues should therefore consider using SPICe as a means to provide a range of Scottish Government publications to all MSPs. The separate Parliamentary Guidance Note *Laying Documents in the Parliament* offers background to that process.

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

9. Colleagues should note that any written request from an MSP, or their staff, for recorded information is a request under FOISA (or the EIRs if the request is for 'environmental information') and should be treated accordingly. (Note: EIRs request can be made orally, though this is very rare) Detailed guidance on how to handle FOI/EIRs requests, along with standard templates, is available on the [Freedom of Information SharePoint site](#), in particular the [Step-by-Step Guide to Handling FOI/EIRs Requests](#).

10. In general, however, a 'business as usual' approach should be taken with information requests received from SPICe. Such requests should be handled as quickly and informally as possible, working within the spirit of FOISA/EIRs. This is because of the nature of the working relationship between SPICe and Scottish Government officials, and because SPICe may be making the requests on behalf of others. If, on rare occasions, SPICe staff wish to have an information request answered formally under FOISA/EIRs, then this will be specifically noted in the request from SPICe, along with reasons why.

Handling requests

11. If MSPs, their staff or SPICe seek **factual information** from civil servants, they are expected to make contact at Head of Branch/Unit level or above (the Parliament has access to the Scottish Government Business Directory). If the request is made below that level the relevant Head of Branch should be notified so that decisions on handling and who is best placed to respond can be taken. **Requests about the merits of Government policy or alternative approaches** must be addressed to the relevant Minister.

12. Before making any such request contacts at the Parliament should:

- consider other possible sources before deciding to approach the Government for assistance.
- respect the constraints placed upon civil servants by virtue of their relationship with Ministers and also, if applicable, by FOISA and the EIRs; and
- respect the anonymity of officials providing the information.

13. **Provide the information requested as fully and accurately as possible and respond positively and timeously** wherever possible, in accordance with FOISA/EIRs. Be conscious that SPICe staff are frequently operating to tight deadlines.

14. **In terms of requests from SPICe respect, so far as possible, the confidentiality under which SPICe operates.** When pursuing queries on behalf of an MSP, SPICe staff will not be at liberty to reveal the name of the MSP, nor of anyone else, initiating the query,

except when the request is being made under FOISA. Civil servants should not press them to do so or refuse to assist them for this reason, except in relation to an FOI request.

15. **Alert your Minister to any requests from SPICe** that are relevant to their portfolio interests. This reflects the possibility of the information being sought by an individual MSP and becoming subject to attention in the media, from stakeholders or being used to support subsequent parliamentary activity (a parliamentary question, in debate etc).

Oral Approaches

16. Oral requests for information may be made by MSPs or their staff.

- **The MSP or member of staff should be invited to put the request in writing** (via e-mail). We cannot insist on requests being put in writing but it does help to clarify the exact terms of the request and will also engage FOISA. If the request is for 'environmental information', then it must be dealt with under the EIRs, even if the MSP declines to put it in writing.

- Requests outwith the scope of factual information, especially about sensitive or controversial issues, will usually need to be referred to the relevant Minister(s), and the response may be sent from the Minister(s) rather than an official. Where the request is being dealt with under FOISA or the EIRs the information must be given in the form requested by the MSP or their staff, so far as reasonably practicable, and this will usually be in permanent form eg paper or electronic.

- Information can be given orally if specifically requested, but this must be followed up with a paper or electronic copy to ensure that we meet our obligations under FOISA/EIRs, and a record of the exchange must also be made.

- the relevant private office should also be notified and provided with a copy of the response.

Written Requests

17. Written requests from MSPs to Ministers, including any requests relating to policy issues, are dealt with under the MACCS system.

- **If a request is addressed to an official and relates to factual recorded information, the Head of Branch/Unit should decide how best to respond, in accordance with the provisions of FOISA/EIRs.** Such requests should be recorded on the [FOI Tracker](#) as well as the MACCS system.
- Requests addressed to an official and relating to other types of information, especially about sensitive or controversial issues, will usually need to be referred to the relevant Minister(s), and the response may be sent from the Minister(s) rather than an official.
- A record of the exchange should also be made for the internal record.
- **Where factual information is provided by staff either orally or in writing** a copy of the correspondence must be retained and immediately copied to the relevant Private Office.

- The relevant **Minister's office, Director, Communications Directorate and Special Advisers should usually be notified**, especially if there are any concerns about providing the information (i.e. if any FOISA exemption or EIRs exception may apply) or it is clear that the enquiry is part of a media campaign. The FOI Unit is also available to provide advice.

MSP Briefing Sessions

18. Colleagues may contribute to MSP oral briefing sessions organised by SPICe, provided they have specific Ministerial clearance to do so. Such briefings are usually given to committees or groups of MSPs from all political parties. As such, they can provide useful opportunities to offer MSPs factual briefing on topical issues. It is for Ministers to decide whether to attend such briefings.

19. However, it is important to be clear about the parameters of such briefings. As indicated in paragraph 2 above it would be a clear breach of the Civil Service Code were civil servants to assist Opposition parties in the development of their policies. Briefings, therefore, have to be purely factual and cannot cover issues of policy formation. Officials should not accept any invitations to offer private briefings or be drawn into debate about the merits of Government policy.

Scottish Government Agencies and Procurators Fiscal

20. Procurators Fiscal and staff of Scottish Government Agencies are bound by the FOISA/EIRs and also by the same administrative requirement to provide only factual recorded information to MSPs, avoiding any attempt to be drawn into debate on Scottish Government policy. However, their relations with MSPs may vary from those described above. For example, Ministers have agreed that Agency Chief Executives may reply direct to MSP correspondence on operational matters (Ministers reply to all correspondence on policy matters). Separate guidance is available on the contact which Procurators Fiscal may have with MSPs in the context of local prosecution.

Requests to the Government for Parliamentary Information

21. The Government may, on occasion, receive requests from the public for information on parliamentary publications and procedures. If the request is made in writing it will be a request under FOISA (or the EIRs if the information is 'environmental'). Colleagues should deal with the request accordingly, referring to the [Step-by-Step Guide to Handling FOI/EIRs Requests](#) for advice on handling the request, and for a standard template to use for the response.

22. Colleagues should consider first whether the information requested is held by the Scottish Government and then whether it should be released. Where the information is not held by the Scottish Government the response should say so – see the [FOI main response template \(or the EIRS - main response template if the information is 'environmental'\)](#). Where it is known that the information is held by SPICe, the response should also provide contact details and advise the applicant that a request can be made direct. Requests from members of the public for information held by the Parliament should be referred to the Parliament's Public Information Service (Ext: 85000).