

## **FOI review of 202200270508 - Communications between SG & the Royal Household re: crown consent provisions in Scottish legislation discussions**

### **Annex A**

#### Section 30(b)(i)

Exemptions under section 30(b)(i) of FOISA (the free and frank provision of advice) apply to some of the information requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially free and frank provisions of advice and exchange of views. The exemptions recognise the need for Ministers to have a private space within which to seek advice and views from officials before reaching the settled public position which will be given in whatever final SPQ answer is used. Disclosing the content of free and frank briefing material on the handling of crown consent in legislation and/or the way crown consent provisions are communicated to MSPs will substantially inhibit such briefing in the future, particularly because discussions on the issue are still ongoing and final decisions have not been taken.

These exemptions are subject to the 'public interest test'. Therefore taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemptions. We have found that on balance, the public interest lies in upholding the exemptions. We recognise that there is a public interest in disclosing information as part of open transparent and accountable government, and to inform the public debate. However, there is a greater public interest in allowing private space within which officials can provide free and frank advice and views to Ministers in briefing for SPQ answers. It is clearly in the public interest that Ministers can properly answer parliamentary questions. They need full and candid advice from officials to enable them to do so. Premature disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness and views in the future which would not be in the public interest.

#### Section 38(1)(b)

An exemption under section 38(1)(b) of FOISA (personal information) applies to a small amount of the information requested because it is personal data of a third party, i.e. names/contact details of individuals, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

## Annex B

### Background note to S6W 02027

This answer has been drafted as a factual statement of the way in which the Crown consent process is currently applied, underlining that it is a process required by the Scotland Act and that it is already signified to Parliament when it has been obtained. This is treated as the response to this question as well as S6W-02028 and S6W-02029 which refer back to this answer. It does not directly address Mr Rennie's calls for increased transparency through the publication of correspondence in S6W-02029. Should the Minister wish to directly address this call for transparency, an additional line has been suggested above.

[Redacted]

The formal request for Crown consent takes the form of a letter. The First Minister's Principal Private Secretary writes to Her Majesty's Private Secretary enclosing 3 copies of the Bill and asking him or her to ascertain whether the provisions in the Bill which affect the Crown are acceptable to Her Majesty. This correspondence has been released under FOI requests.

[Redacted]

#### Background information on the Crown consent process

If a Bill contains provisions which would, if it were a Bill in the UK Parliament, require the consent of the Queen, Crown consent is required – meaning that the UK rules on Crown consent effectively apply to Bills of the Scottish Parliament.

In accordance with the Scotland Act 1998 if a Bill requires Crown consent, rule 9.11 of the Parliament's Standing Orders requires that the Parliament cannot debate whether a Bill should be passed unless Crown consent is signified by a member of the Scottish Government. The Scottish Government therefore typically signifies Crown consent at the start of the Stage 3 debate for any Bill where it is required.

The Government engages in correspondence with representatives of The Queen as part of the process of consideration of how the Bill applies to the Crown and Crown consent. Where it is anticipated that Crown consent will be required, SGLD engage with the Queen's Solicitor in Scotland to discuss the implications of the relevant provision. There may also be policy discussions with representatives of The Queen.

Information about how legislation applies to the Crown and whether Crown consent is required can be debated and scrutinised by Parliament.

#### Recent Freedom of Information requests relating to Crown Consent

In February 2021 a Freedom of Information request (FOI) was received asking for information about Bills in Session Five that required Crown consent. As part of the response the Scottish Government released a list of all of the Bills from the beginning of Session 5 until 13 February 2021 which required Crown Consent, and copies of the formal correspondence with the Royal Household. This information has

also been released by UK Government departments in response to similar requests.

Two further FOI requests have been received by officials regarding Crown consent in August 2021 which request similar information to the current Parliamentary Questions, including the release of correspondence, the dates on which Bill texts were amended and the amendments made to Bills in light of the Crown consent process. A sample search has indicated that the requests will breach the cost limit of £600 applied to FOIs given the time required to search and evaluate documents relating to the 336 Acts of Parliament which have been passed since devolution in order to establish which required the Crown consent process.

### Public Comments on Crown consent

The Cabinet Secretary for Health and Social Care recently outlined the following in an interview aired on 1 August on BBC Scotland regarding Crown consent for the Heat Networks Bill:

*There's a process in place that whenever any legislation for example could infringe upon land that is owned by the Queen, by the monarch, by the royal household, then there is a process that you go through. And of course the minister at the time Paul Wheelhouse explained in parliament why that exemption was there in the first place. If the opposition are saying that we should make that correspondence from the private household public, then that's a conversation of course we can have of course with the royal household. But to suggest that there's some secrecy going on here when the minister at the time Paul Wheelhouse spoke very publicly in parliament about this exemption, I think really puts the idea that there's not enough transparency around this to be bed.*

*There was reasons why that exemption was granted, and of course parliament ended up passing that bill. That was explained in parliament at the time by Paul Wheelhouse, and there didn't seem to be much of a reaction or a concern at the time. Now if the question is should all correspondence or particular correspondence from the royal household be published, that's something we can examine and explore.*

**Contact: [Redacted]**

**Tel.: [Redacted]**

**Parliament and Legislation Unit**

**S6W-02030 Willie Rennie:** To ask the Scottish Government whether it will (a) provide details of what interests would determine whether it seeks Queen's consent under Rule 9.11 of the Standing Orders and (b) publish any guidance on this matter that it has (i) produced and (ii) received from representatives of the Crown.

The Parliament's Standing Orders are required, in accordance with the Scotland Act 1998, to set out that should provisions within a Bill require the Queen's consent if the Bill were an Act of the United Kingdom Parliament, the Bill requires Crown consent. This means that since the establishment of Scottish Parliament in 1999 the interests that determine this matter in the UK Parliament affect the application of Crown consent in the Scottish Parliament. Guidance prepared by the Office of the Parliamentary Counsel for the United Kingdom Government – *Queen's or Prince's*

*Consent* – explains details of these interests and is taken into account by the Scottish Government. This guidance is accessible here:

<https://www.gov.uk/government/publications/queens-or-princes-consent>

The Scottish Parliament's guidance on Public Bills, available on its website, also outlines the interests that would determine the requirement for Crown Consent, notably at paragraphs 2.51-2.54:

[https://archive2021.parliament.scot/S5ChamberOffice/GuidanceonPublicBills\\_S5v2\\_FINAL.pdf](https://archive2021.parliament.scot/S5ChamberOffice/GuidanceonPublicBills_S5v2_FINAL.pdf)

No guidance has been received from representatives of the Crown on the issue of Crown consent.

**Background Note:**

Background information on Crown consent is outlined at the Background Note for question S6W-02027.

This answer provides factual information about the requirement for Crown consent and points to information already publicly available about the interests that determine the requirement for Crown consent.

**Contact: [Redacted]**

**Tel.: [Redacted]**

**Parliament and Legislation Unit**

**S6W-02028 Willie Rennie:** To ask the Scottish Government how many times it has sought Queen's consent in each year since 2007, broken down by the (a) title of the legislation and (b) date on which consent was (i) sought and (ii) obtained.

I refer the member to the answer to question S6W-02027.

**Background note:**

Background information on Crown consent is outlined at the Background Note for question S6W-02027.

Members can obtain information on which Bills required Crown consent through the Parliament's Official Reports because Crown consent must be signified for these Bills before Stage 3 proceedings.

**Contact: [Redacted]**

**Tel.: [Redacted]**

**Parliament and Legislation Unit**

**S6W-02029 Willie Rennie:** To ask the Scottish Government which pieces of legislation have been amended as a result of exchanges prompted by Rule 9.11 of the Standing Orders in each year since 2007, and, for each of these, whether it will publish (a) the details of any concerns raised by any party representing the Crown and (b) its response.

I refer the member to the answer to question S6W-02027.

**Background note:**

Background information on Crown consent is outlined at the Background Note for question S6W-02027.

Members can obtain information on which Bills required Crown consent through the Parliament's Official Reports because Crown consent must be signified for these Bills before Stage 3 proceedings as is noted in the answer to question S6W-02027. For the Scottish Government to obtain the other information requested here – providing the details of all exchanges on Crown consent since 2007 – a search would have to be carried out on all individual Bill files since 2007, and initial analysis suggests this would breach the upper cost limit applied to Parliamentary Questions and Freedom of Information Requests. It is also almost certain that some Bills were changed before introduction in order to address concerns about Crown consent, however these will not have been “amended” in parliamentary terms and so would not be included in such a list.

The call to publish correspondence is not directly addressed and as outlined at the Background Note to S6W-02027, the Minister may wish to include an additional line in that answer to make a broad commitment to considering options for increased transparency.

**Contact: [Redacted]**  
**Tel.: [Redacted]**  
**Parliament and Legislation Unit**

**S6W-02039 Alex Cole-Hamilton: To ask the Scottish Government, in light of recent reports regarding Queens consent, whether it will provide details of (a) the procedure for this and (b) its impact.**

I refer the member to the answers to questions S6W-02027 and S6W-02030.

**Background note:**

Background information on Crown consent is outlined at the Background Note for question S6W-02027.

**Contact:[Redacted]**  
**Tel.: [Redacted]**  
**Parliament and Legislation Unit**