

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Further Extension of Coverage of the Freedom of Information (Scotland) Act 2002 to More Organisations
Summary of aims and desired outcomes of Policy	To seek views on whether Freedom of Information legislation should be extended to more organisations undertaking functions of a public nature
Directorate: Division: team	Directorate for Strategy and Constitution: Strategy, Elections and Freedom of Information Division - Freedom of Information Unit

Executive summary

The Freedom of Information (Scotland) Act 2002 (FOISA) provides a statutory right of access to information held by Scottish public authorities.

The provisions of the Act can be extended to bodies that carry out functions of a public nature or which provide, under a contract with a Scottish public authority, a service which is a function of that authority. This can be done by making an order under section 5 of the Act, which designates those bodies as a Scottish public authority for the purposes of the Act.

Background

Between June and September 2015 the Scottish Government consulted on extending coverage of FOISA to:

- contractors who run privately-managed prisons
- providers of secure accommodation for children
- grant-aided schools, and
- independent special schools

The Scope of the EQIA

Consultation invited comments on the proposals in terms of how they may impact on any particular equalities group, including in respect of age, gender, race, religion, disability and sexuality.

In addition to all the organisations affected by the proposals the consultation paper was circulated to equality issue representative organisations. These included Age Scotland, Children First Scotland, Inclusion Scotland, Capability Scotland, Engender, Interfaith Scotland and the Scottish Transgender Alliance.

Key Findings

Few consultation responses commented on the specific 'EQIA' related question (no responses were received from the various equality representative bodies).

Where comment was made this was favourable towards the proposals in so far as they were perceived to impact on certain equality groups (or at least the 'client' group specific to organisations proposed for inclusion, for example, children, prisoners, or the disabled).

A common theme among those responding to this question was one of equity and fairness in respect of access to information

being dependent on the service provider - and how, given the current proposals, this would impact on various 'client' groups.

For example, one response noted that the proposals were likely to impact to a greater extent on children, young people (and adults) with a disability but that this would probably be a benefit to these groups as it would give them greater powers to obtain information.

The same respondent also commented that prisoners in private prisons were currently disadvantaged compared to those in public prisons. This point was mirrored in the response from the Prison Reform Trust who noted that, as people from disadvantaged groups were often over represented in prisons and secure settings, any measure that supported transparency and accountability of services to these groups was to be welcomed.

In other responses, the Care Inspectorate considered that the proposals would have a positive impact providing more openness and transparency on public expenditure for services which covered people of all protected characteristics. The Scottish Information Commissioner also believed that coverage would remove or mitigate existing inequalities.

John Mason MSP commented that while the starting point of FoI was to benefit all members of the public, this in particular applied to disadvantaged groups who may have difficulty proving that they were being discriminated against or otherwise disadvantaged. Mr Mason therefore considered that equalities groups would be likely to benefit from increased coverage of FoI.

Finally, we also note the response from Unison which cited the Special Report produced by the Scottish Information Commissioner, quoting:

'Access to information is also fundamental to the concepts and aims of equality; whether to enable someone to exert their human rights effectively, or to challenge the fairness of public services. To demand fair and equitable services, people need to know the standards they can expect and have the evidence to demonstrate the extent to which they are being met.'

Recommendations and Conclusion

While few responses made reference to issues of equality, we thank those which did - and agree with the overall sentiment expressed that the proposals will improve equity and fairness, particularly for client groups disadvantaged due simply to the specific provider of a certain service, for example, prisoners in a private prison or disabled children in an independent special school.

We propose to formally review the impact of this order once it has been in force for a year. As far as we are able, we would intend to include in this review process an assessment of requesters - and the extent that those requesting information from the organisations brought within scope of FOISA are from particular equality groups. The review would also allow us to consider whether adequate assistance and guidance is available to those from the various equality groups to make effective information requests.

Consultation on 'Time for Compliance Regulations'

In March 2016, the Scottish Parliament agreed that the Freedom of Information (Scotland) Act 2002 should be extended to, among others, grant-aided and independent special schools.

However, following earlier consultation and the comments received from affected schools on the administrative impact of responding to information requests during school holiday periods, it was decided to also consult on regulations varying the timescales to respond to information requests and reviews.

The proposed 'Time for Compliance Regulations' would require a response to an information request, or request for review, within 20 working days but disregarding any working day which is not also a school day. A response must still be issued no later than the 60th working day following the date of receipt of an information request (or request for a review).

The proposals are specific to grant-aided and independent special schools. Consultation took place between March and May 2016 - the consultation paper inviting comments on equality related impacts arising from the proposals and which would be reflected in an updated EQIA.

A small number of consultation responses make reference to equality issues. The Children and Young People's Commissioner Scotland considered that the greater flexibility would impact on vulnerable children and young people. The Campaign for Freedom of Information Scotland requested that further consideration of the impact of the proposal on the rights of disabled children and their families/carers, be undertaken.

We note the concerns of both organisations and would emphasise that the overriding intention behind this latest extension of coverage of FOISA is to increase access to information rights (previously, requestors had no FOI rights in

requesting information from grant-aided and independent special schools). Once FOISA is extended to these schools, the Act will apply in full, enhancing information rights.

We consider that the proposed Regulations are, in practice, likely to affect only a small proportion of information requests. In the absence of available data about those making information requests (the basis of the legislation being that requests are 'requestor blind') it is not possible to categorically assess whether any particular equality group (over and above any other individual or organisation also wishing to make a request) would be unduly affected by the more flexible response timescales.

The Regulations are intended to enable those schools coming within scope of FOISA to meet their legal obligations - rather than acting as a barrier preventing access to information from anyone making a request. However, to mitigate against any undue delay in responses, we intend to revise the Section 60 Code of Practice to emphasise the requirement to respond 'promptly' and that, if staff are available during holiday periods, it would be good practice to process requests even if the Regulations apply.

As noted above, we propose to review the impact of the order extending coverage of FOISA to various organisations, including grant-aided and independent special schools, after one year. As part of this review we would assess any specific impact of the proposed Time for Compliance Regulations. A key part of the exercise will be to assess the impact on equality groups of both the order extending coverage of FOISA and the Regulations allowing variation in the timescales for response.