

Consultation on a Draft Order extending coverage of the Freedom of Information (Scotland) Act 2002 to Registered Social Landlords

Final Report

February 2019



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Introduction

The Freedom of Information (Scotland) Act 2002 (the Act) provides a statutory right of access to information held by Scottish public authorities. The legislation applies to those public authorities listed in schedule 1, as well as companies wholly owned by authorities listed in schedule 1.

In addition, the Act's provisions can be extended to other bodies, including private 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.

To date, two orders under section 5 of the Act have been agreed by the Scottish Parliament and are in force. The orders have designated as public authorities for the purposes of the Act certain arm's length organisations, private prison contractors, providers of secure accommodation for children, grant-aided and independent special schools and Scottish Health Innovation Ltd.

Consultation on the terms of a draft order extending the Act to registered social landlords (RSLs) and connected bodies was undertaken between December 2017 and March 2018. Information on this consultation – including published responses – can be found on the Scottish Government [consultation webpages](#)¹

This report, following consultation, sets out the Scottish Government's conclusions.

¹ <https://consult.gov.scot/freedom-of-information/foi-social-landlords-2/>

Functions covered by the draft order

As noted above, the Act can be extended to bodies, including private bodies, insofar as they are considered to undertake functions of a public nature. While there was broad support for the draft Order from organisations representing the views of tenants – and indeed general consensus from RSLs and their representative bodies on the principle of designating RSLs in so far as they undertake functions of a public nature – the perceived breadth of the Order was subject to considerable criticism.

The premise of the draft Order was to align designation and the statutory right of access to information to the oversight and regulatory role of the Scottish Housing Regulator (SHR) as referenced at section 3 of the Housing (Scotland) Act 2010.

Section 3 of the Housing (Scotland) Act 2010 sets out the SHR's functions as being to keep a publicly available register of social landlords and to monitor, assess and report regularly on social landlords' performance of housing activities and registered social landlords' financial well-being and standards of governance.

The Order specifically proposed to designate RSLs insofar as they undertook functions as defined by the term 'housing activities' at section 165 of the Housing (Scotland) Act 2010 and in respect of which were already subject to regulation by the Scottish Housing Regulator.

The Housing (Scotland) Act 2010 defines 'housing activities' as

any activities undertaken by a social landlord in relation to housing services which are or may be provided by it,

and continues:

'housing services' means providing housing accommodation and related services and includes anything done, or required to be done, in relation to—

- (a) the prevention and alleviation of homelessness,
- (b) the management of housing accommodation,
- (c) the provision of services for owners and occupiers of houses,
- (d) the provision and management of sites for gypsies and travellers, whatever their race or origin.

Both the Scottish Federation of Housing Associations (SFHA) and the Wheatley Housing Group (WHG) raised concerns about the proposed breadth of the order, which, they felt at least theoretically, could capture everything done by both RSLs and RSL subsidiaries (irrespective of whether or not the SHR exercised any regulatory responsibility).

In noting that aligning the Order to functions regulated by the SHR might be 'convenient' the Glasgow and West of Scotland Forum of Housing Associations (GWSF) considered that there was no particular logic to this in relation to a service such as factoring as this was not a public service unlike mainstream housing association landlord services.

Minimal comment was made in respect of those housing services falling within paragraphs (a) and (d) of the definition, in relation to the prevention and alleviation of homelessness and the provision and management of sites for gypsies and travellers.

We continue to take the view that activities undertaken in respect of the prevention and alleviation of homelessness and the provision and management of sites for gypsies and travellers, in line with our 'factor-based' approach to designation, are functions of a public nature.

In addition to owning and managing almost half of Scotland's social housing, RSLs have an important role to play in preventing and alleviating homelessness.

The Housing (Scotland) Act 2001 introduced a power for councils to request RSLs to provide accommodation to homeless people - and a corresponding duty on RSLs to comply with such requests within a reasonable period, unless there is good reason for not doing so.

We also note the Scottish Government's Code of Guidance on Homelessness recommends that Councils should offer homeless people a genuine choice of accommodation – with RSLs potentially broadening the options available.

Specifically in respect of the treatment of gypsies and travellers, the Scottish Social Housing Charter (overseen and enforced by the SHR) requires local councils and social landlords with responsibility for managing sites for Gypsy/Travellers should manage the sites so that they are well maintained and managed, and meet the minimum site standards set in Scottish Government guidance.

The Scottish Government guidance details the minimum standards expected to be met by local authorities and RSLs and address issues such as energy efficiency, safety and security and maintenance and repairs.

Finally, we would suggest that there is a significant collective benefit in ensuring that appropriate arrangements – whether through statute or regulation – addressing issues relating to homelessness, gypsies and travellers are in place.

We do not therefore consider any amendments are required to the Order in respect of reference to either the alleviation of homelessness or the provision and management of sites for gypsies and travellers.

In proposing how the draft Order might be revised to provide increased clarity around those functions which are within scope – and those which are not – the SFHA, GWSF and WHG all made reference to Scottish Secure Tenancies (SSTs). SSTs and, similarly, Short Scottish Secure Tenancies, are social housing tenancies intended primarily for tenants of local authorities and RSLs - in contrast to purely private sector tenancy arrangements such as Short Assured Tenancies and Private Residential Tenancies.

SFHA and WHG in particular considered that specifically qualifying the functions to be designated for the purposes of the Act by reference to SSTs would remove concerns around the perceived breadth of the Order, while satisfying the policy intention of extending the Act to functions of a public nature undertaken by RSLs for which the SHR had existing regulatory responsibility.

It is clearly in the interests of all concerned – the RSLs (as new Scottish public authorities), potential information requesters and the Scottish Information Commissioner (as regulator) – that the Order be drafted with as much clarity as possible.

While we would not agree with the interpretation that some have placed on the Order as subject to consultation, the Order has been revised to provide additional clarity by providing that the management of housing accommodation (paragraph (b) of the definition of housing services) is only in scope where the RSL has granted a Scottish secure tenancy or a short Scottish secure tenancy.

This is intended to make it clear that non-social housing functions of RSLs (such as providing accommodation for private renting or at mid-market rents) are excluded from the Order.

In turning to paragraph (b) of the definition of housing services, which makes specific provision for the SHR to oversee and regulate housing services for owners and occupiers of houses, we note the particular objections to the inclusion of factoring within scope of the draft order – a key service provided to homeowners by both RSLs and RSL subsidiaries.

While overall few consultation responses addressed the issue of factoring, those from the SFHA, GWSF and WHG all objected to its inclusion (as a service subject to oversight by the SHR). The primary reasons for objection were the non social housing nature of factoring, its commercial basis and the apparent contradiction of not proposing to extend the Act to other large commercial factoring firms in the market (though local authority factors are of course already subject to the Act).

In adopting the ‘factor-based’ approach, the consultation paper set out the case for including information relating to factoring within scope of the Act.

Factors included the extent of regulation and oversight such as the requirement to meet the regulatory requirements of statutory bodies such as the SHR. Factors are also required to comply with the Code of Conduct for Property Factors which emphasises the importance of good communication and transparency (though, as with the Scottish Social Housing Charter, without the full range of statutory obligations set out in Freedom of Information legislation). We would also suggest that factoring concerns issues of common interest and wider community benefit.

We have fully considered all issues raised around the issue of factoring and the competing arguments on whether factoring can be defined as a function of a public nature. We have concluded that the provision of a factoring service to a homeowner by an RSL is not a function of a public nature but, rather, is an essentially private arrangement between the RSL as factor and the owner.

The draft Order as laid therefore excludes reference to paragraph (c) of the definition of housing services and so the provision of factoring services, as a service provided to an owner, will not be designated as a function of a public nature of RSLs and their connected bodies.

However, as a result of this consideration of factoring services we have noted that certain aspects of factoring (which apply to all factors, not just RSL factors) might be considered to be functions of a public nature. We may therefore consider consulting on factoring services more broadly in future.

Financial well-being and governance

As noted above, the premise of the proposed Order was to align designation and the statutory right of access to information to the oversight and regulatory role of the SHR, as set out in section 3 of the Housing (Scotland) Act 2010.

While the draft Order made reference to ‘housing activities’ (the first element of section 3) due to the lack of specific reference to the financial well-being and governance arrangements of RSLs (the second element of section 3), the Scottish Information Commissioner (the Commissioner) asked for clarity on this point in his consultation response.

Given the intention to align the Order to the regulatory oversight powers of the SHR (insofar as these concern the public functions of RSLs and their subsidiaries) we accept that specific reference should be made in the Order concerning the financial well-being and standards of governance of RSLs – and that therefore information in connection with these should be within scope of the Order.

Such reference would ensure that information about an RSLs financial well-being and governance arrangements can be asked for directly from an RSL – rather than, for example, by proxy from the SHR (which might not yet have been supplied with the relevant information by the RSL).

Consequently, the wording of the Order has been adjusted to ensure that information in respect of an RSLs’ financial well-being and governance arrangements will come within the scope of the Act. This is on the basis that it is a function of an RSL to provide information to the SHR to allow the SHR to monitor, assess and report on RSLs’ financial well-being and standards of governance. We would suggest that providing information to a regulator in order that the regulator can discharge its statutory functions is itself clearly a function of a public nature.

Human Rights

Responses from both WHG and the SFHA, while acknowledging the public/private ‘hybrid’ nature of RSLs, questioned the apparent breadth of RSL functions considered to be ‘of a public nature’ when compared to human rights case law, suggesting that current case law had the effect of limiting what could, legally, be brought within scope of the Act on the basis that it was a public function.

While we note these views, we are not of the opinion that human rights case law in itself acts as a constraint in determining, for the purposes of a section 5 order, whether an organisation undertakes functions of a public nature.

Section 5 of the Act provides Scottish Ministers with considerable discretion over those factors considered relevant in coming to a view on whether an organisation exercises functions of a public nature.

While human rights case law may inform an assessment, as set out in the consultation paper a broad range of factors will be taken into consideration in determining whether an organisation undertakes functions of a public nature.

Subsidiaries

Earlier consultation had not proposed to designate RSL subsidiaries, other than RSLs which were themselves subsidiaries. However, in response to concerns expressed in response to the initial consultation, principally by the then Commissioner, the draft Order included RSL subsidiaries by designating connected bodies within the meaning of section 164(c) of the Housing (Scotland) Act 2010.

The former Commissioner noted that if RSLs were designated but their subsidiaries were not, then requesters could only access information held by the RSL and not by its subsidiaries. It was also noted that if functions were delivered by subsidiaries rather than the parent RSL in future information rights would be lost.

This, we considered, justified the inclusion of RSL subsidiaries because designating subsidiaries would mean that access to information would depend on the function (as defined by the Order) rather than the corporate structure of the organisation delivering it.

A number of responses commented on the issue of the inclusion of subsidiaries. While the GWSF understood the reasoning behind including subsidiaries they considered that all services relating purely to private housing (as opposed to SSTs) and generally delivered by RSL subsidiaries rather than the RSL itself should be excluded, such as letting agency services and mid-market rent.

In their response the SFHA considered that all commercial subsidiaries and all functions not meeting the 'public nature test', should be removed from the terms of the order. The SFHA stated that subsidiaries were created to deliver non-core activities in order to protect the core activities and assets of the RSL from commercial and wider role activities.

Similarly, WHG considered that extending the Act to commercial subsidiaries of RSLs seemed to disregard the status of those bodies as businesses in their own right, with their own Boards and responsible for achieving stated business objectives.

WHG therefore proposed that the order be redrafted to clarify that the extension of the Act to connected bodies of RSLs be limited solely to information relating to those functions and activities for which the Scottish Housing Regulator had existing regulatory responsibility. WHG considered that such re-drafting would provide the clarification needed to ensure that any extension of FOISA would not, for example, extend to the provision by a connected body of housing for sale or rent on a full market or mid-market basis.

The Commissioner's response to consultation on the draft Order welcomed the inclusion of subsidiaries.

As noted above, a number of concerns around the intention to designate RSL subsidiaries related specifically to the commercial nature of their functions. However, the central question of designation is not whether the function is commercial in nature. Rather it is whether the function appears to the Scottish Ministers to be public in nature.

In addition to the existing Scottish public authorities (which will themselves frequently hold a considerable range of information of a commercial nature), FOISA already applies to numerous companies and businesses operating in the private sector on a commercial basis.

While noting the concerns expressed around the possibility of commercial information held by RSL subsidiaries being requested – and therefore potentially released – FOISA already contains exemptions which are designed to protect information of that sort from release where it is appropriate to do so.

We are not aware of evidence from either the public or private sectors of the protections in the legislation being inadequate in respect of their commercial information.

We would emphasise that the intention of the Order is not to extend the Act to functions beyond those which are subject to regulation and oversight by the SHR.

The terms of the Order as laid provides clarity in respect of those functions that are being brought within the scope of the Act. As noted in response to the consultation, core functions of RSLs in respect of the provision of social housing will generally be undertaken by the RSL itself and not an RSL subsidiary (the SFHA in their response commented that the closest example of this would be where an RSL sets up a subsidiary to undertake repair and maintenance activities).

We do not therefore consider it likely that the Order will significantly impact on RSL subsidiaries given these predominantly focus on the provision of non core and non social housing related services and activities.

Environmental Information (Scotland) Regulations 2004

We note the SFHA's specific concerns around the application of the EIRs to RSL subsidiaries.

In the event of RSL subsidiaries being designated as public authorities under section 5(1) of FOISA, they would also automatically become subject to the EIRs (insofar as information within scope of requests was environmental in nature).

In considering the issue of whether FOISA should be extended to RSL subsidiaries, the SFHA questioned the extent that subsidiaries exercised functions of a public nature (noting that the scope of the EIRs placed emphasis on organisations which had public responsibilities relating to the environment, exercised functions of a public

nature relating to the environment or provided public services relating to the environment).

The concerns of the SFHA would seem to relate to the range of functions to be included in the proposed Order – rather than whether the EIRs per se should apply to RSL subsidiaries.

We note that the underlying premise of the Directive² from which the EIRs are derived is to seek to increase access to environmental information and, while limited to environmental information, that this should not be construed in a restrictive fashion.

However, as previously noted, the Act can only designate bodies insofar as they undertake functions of a public nature. The Order therefore only proposes to extend the Act to include functions considered to be of a public nature.

As only information relating to an organisation's public functions will be within scope of the Act it therefore follows that only environmental information in respect of those same public functions could be subject to request under the terms of the EIRs (whether held by an RSL or an RSL subsidiary).

Defining subsidiaries

We also note the comments made by the Commissioner in respect of the inclusion of subsidiaries, including that connected bodies should be listed separately for the purposes of the Order.

We have considered this point but are of the view that a separate entry is not required given the premise of the Order is to bring within scope the same functions both for RSLs and for RSL subsidiaries.

The Commissioner also questioned the appropriateness of adopting 'housing activities' (as defined at section 165 of the Housing (Scotland) Act 2010) as functions in respect of RSL subsidiaries (in addition to those of RSLs themselves) on the basis that this definition referred to activities undertaken by a social landlord.

We note the comments of the Commissioner and have adjusted the wording of the Order accordingly to reflect that the functions identified in the Order apply both to RSLs and RSL subsidiaries for the purposes of the Act.

Housing (Amendment) (Scotland) Act 2018

We note the concerns expressed by the Commissioner regarding the possibility of an unintended consequence of changes to the role of the SHR, brought about by the Housing (Amendment) (Scotland) Act 2018, being the removal of RSLs from the scope of the Environmental Information (Scotland) Regulations 2004 (at least until RSLs are themselves designated as Scottish public authorities and hence become subject to the Regulations in their own right).

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0004&from=en>

We consider these concerns misplaced given the significant degree of control the Regulator will continue to exercise. Given this, in general agreement with the Local Government and Communities Committee in their report³ on stage 1 of the Bill, we have not considered that any legislative changes are necessary (either by means of housing legislation or the EIRs themselves) in addressing what is a temporary issue.

Moreover, we note that both GWSF and the SFHA have made clear to their members that, as far as they are concerned, the EIRs continue to apply in respect of requests for environmental information made to RSLs.

Commencement

A number of responses, including those from the SFHA and the GWSF expressed particular concern about the proposed commencement date of the Order (at the time of consultation 1 April 2019). A date of 1 April 2020 was considered more appropriate to allow adequate preparation.

While 1 April 2019 is clearly no longer realistic, we are not persuaded that delay until 1 April 2020 is necessary. The Commissioner has long advocated a period of nine months as being a suitable lead in time, in large part informed by previous experience and an assessment of the time required for his staff to provide training and guidance for organisations new to FOISA.

Subsequent to the announcement of the intention to bring RSLs within scope of the Act in December 2017 we are aware that considerable work has been undertaken by the RSL sector, supported by the Commissioner, to prepare for designation. We are therefore of the opinion that delaying commencement until 1 April 2020 is unjustified and propose that the Order comes into force on 11 November 2019, nine months after it is laid before the Scottish Parliament.

³ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/LGC/2018/2/1/Stage-1-Report-on-the-Housing--Amendment---Scotland--Bill/LGCS52018R2.pdf>

Conclusion

Having thoroughly considered all issues raised as part of the consultation process we conclude that Freedom of Information legislation should be extended to Registered Social Landlords (and connected bodies) to the extent set out in the Order at **Annex B**. A final Business and Regulatory Impact Assessment is published on our website.

While noting the concerns of, among others, the SFHA and GWSF in respect of the period of time necessary to prepare for designation, we are of the view that, as proposed by the Commissioner, nine months provides an appropriate and sufficient time for preparation.

Subject to Parliamentary approval the Order will come into effect on 11 November 2019. It is our intention to review the impact of the order one year after coming into force.

Consultation responses – key issues

Support for the proposals, as set out in the consultation paper, was received from a range of organisations. These included **Sauchie and Fishcross Community Council**, **Dumfries and Galloway Council**, **Maxwellton Court Tenant Association** and **Regional Networks** representing the views of tenants – with **South East Scotland Regional Network** noting their unanimous agreement that FOISA should be extended to cover the functions that are already subject to regulation by the SHR as well as to certain functions of RSL subsidiaries.

The **Glasgow Homeowners' Campaign** welcomed the proposal to extend FOISA to all housing associations and their factoring organisations considering the right to information to be a fundamental human right. This point was echoed in comments made by the **Campaign for Freedom of Information in Scotland**, which, while dismayed by the delay in designation, welcomed the simplicity of the order though noted insufficient clarity around which subsidiaries would be in scope. Support for the proposals, including the inclusion of subsidiaries, was also received from **Unison Scotland** who urged the Scottish Government to move quickly to explore whether certain organisations – or class of organisation – delivering health and social care functions, but currently not subject to the Act, should be brought within the scope of the legislation.

Support for the basic premise that tenants of RSLs should have the same rights to information as tenants of a local authority landlord came from **Stirling Council** (though the Council considered the inclusion of factoring service appeared unfair while acknowledging a number of local authorities provide such services).

The response of the **Scottish Information Commissioner** identified issues of clarity around drafting, specifically in respect of subsidiaries which, it was suggested, should be listed separately in the order. The Commissioner also noted issues around establishing a comprehensive list of RSL subsidiaries. While the proposed lead in time was considered sufficient, the Commissioner continued to be concerned about the impact of the Housing (Amendment) (Scotland) Bill and the potential confusion and uncertainty about RSLs being subject to the EIRs.

Almost half of the consultation responses received, representing the views of a considerable number of housing associations, endorsed the comments of the **Glasgow and West of Scotland Forum of Housing Associations (GWSF)**. The GWSF specifically did not focus on the principle of extension but rather the functions intended to be within scope of the order. The GWSF noted the convenience of proposing coverage on the basis of those functions regulated by the SHR but saw no logic to this approach in relation to factoring given the strong legal rights factored owners now had. While welcoming the exclusion of care services the GWSF considered the reasons for the exclusion of care functions could also apply to

factoring which was not a public service in the way that mainstream housing association landlord services were. The GWSF understood the reasoning behind including RSL subsidiaries within scope of the order but considered that all services relating purely to private housing or to private tenancies (as opposed to Scottish Secure Tenancies) should be excluded. The GWSF also confirmed that they understood the EIRs to continue to apply and that this was not a basis for bringing forward commencement – which should not be before October 2019.

Wheatley Housing Group (WHG) considered that the draft order went well beyond the stated policy intention of only extending FOISA to cover functions and services for which the Scottish Housing Regulator had existing regulatory responsibility. As currently drafted, the order could extend FOISA to all housing and related activities undertaken by connected bodies – including factoring, care and letting services. WHG noted that the Housing (Scotland) Act 2010 did not limit the definition of ‘housing services’ to services/activities and proposed the order be clarified to apply only to functions and activities of RSLs and connected bodies which specifically relate to Scottish Secure Tenancies – activities for which the SHR has regulatory responsibility. This, WHG considered, would bring the order into line with relevant case law in respect of the extent RSLs undertook functions of a public nature. Dependent on changes to the order, WHG proposed commencement from 1 April 2020.

The **Scottish Federation of Housing Associations (SFHA)** expressed concern about the wide scope of the order as drafted and in particular the proposed inclusion of RSL subsidiaries. The SFHA noted that subsidiaries were created to deliver non-core activities to protect the core activities and assets of the RSL – they were not set up to outsource the core functions of the RSL. The SFHA considered it inappropriate to extend FOISA to RSLs’ commercial factoring services but not to large commercial factoring firms – considering that commercial factoring and care services did not satisfy the ‘public nature test’ of FOISA. The SFHA considered that ‘housing activities’ was a far too blanket, catch-all term theoretically covering everything that RSLs and their subsidiaries did and proposed that the order be redrafted so that it applied only to functions of a public nature – predominantly concerning services relating to the provision and management of Scottish Secure Tenancies and the development of properties for this purpose (i.e. as subject to regulation by the SHR).

In the annex to their response the SFHA further emphasised concerns regarding the breadth of the order and considered that, in terms of the factors used in an assessment of what constituted a function of a public nature, only certain functions in respect of homelessness and social letting would fall within scope. The response also considered that the Scottish Government’s interpretation of what constituted ‘functions of a public nature’ differed significantly from human rights case law which suggested only core social housing functions would be considered as being of a public nature.

In opposing the extension of FOISA to RSLs, **Castlehill Tenants' Organisation** expressed concern that the proposal would have a detrimental effect on tenants, noting that council tenants were less satisfied with information they received from their landlords than RSL tenants and that RSL tenants already had the right to be consulted, knew their landlord was regulated by the SHR and had the right to complain to the Scottish Public Services Ombudsman.

Draft Order laid before the Scottish Parliament under section 72(2)(b) of the Freedom of Information (Scotland) Act 2002, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2019 No.

FREEDOM OF INFORMATION

**The Freedom of Information (Scotland) Act 2002 (Designation of
Persons as Scottish Public Authorities) Order 2019**

<i>Made</i>	- - - -	<i>2019</i>
<i>Coming into force</i>	- -	<i>2019</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 5(1) of the Freedom of Information (Scotland) Act 2002⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 72(2)(b) of that Act a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 5(5) of that Act the Scottish Ministers have consulted every person to whom the Order relates or persons appearing to them to represent such persons and such other persons as they consider appropriate.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 and comes into force on 11 November 2019.

(2) In this Order, “the 2010 Act” means the Housing (Scotland) Act 2010⁽²⁾.

⁽¹⁾ 2002 asp 13. Section 5(5) was substituted by section 1(1) of the Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2).

⁽²⁾ 2010 asp 17.

Extension of coverage of the Freedom of Information (Scotland) Act 2002

2. The persons described in column 1 of the table in the schedule of this Order are designated under section 5(2)(a) of the Freedom of Information (Scotland) Act 2002 as a Scottish public authority in relation to the functions specified in column 2 of that table.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Article 2(1)

<i>Column 1</i>	<i>Column 2</i>
<i>Description of persons</i>	<i>Functions</i>
<p>A registered social landlord as defined in section 165 of the 2010 Act⁽³⁾ and a connected body under section 164(c) of that Act.</p>	<p>Any activity in relation to housing services as defined in section 165 of the 2010 Act, subject to the following—</p> <ul style="list-style-type: none"> (a) paragraph (b) is limited to the management of housing accommodation for which a registered social landlord has, under the Housing (Scotland) Act 2001⁽⁴⁾, granted a Scottish secure tenancy as defined in section 11 or a short Scottish secure tenancy as defined in section 34 of that Act, and (b) omit paragraph (c). <p>The supply of information to the Scottish Housing Regulator⁽⁵⁾ by a registered social landlord or a connected body in relation to its financial well-being and standards of governance.</p>

⁽³⁾ Section 165 was amended by section 98(4) of the Housing (Scotland) Act 2014 (asp 14), paragraph 41 of schedule 3 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) and paragraph 27 of schedule 8 of the Bankruptcy (Scotland) Act 2016 (asp 21).

⁽⁴⁾ 2001 asp 10.

⁽⁵⁾ The Scottish Housing Regulator was established by section 1 of the Housing (Scotland) Act 2010.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the extension of coverage of the Freedom of Information (Scotland) 2002 Act (“the 2002 Act”) under section 5 of that Act.

Section 5 of the 2002 Act enables the Scottish Ministers to designate as Scottish public authorities by order any person who is neither listed in schedule 1 of the 2002 Act (nor capable of being added to that schedule by an order under section 4(1)), is neither a public body nor the holder of a public office, and who appears to the Scottish Ministers to exercise functions of a public nature or is providing, under contract to a Scottish public authority, any service whose provision is a function of that authority.

Article 2(1) designates registered social landlords and certain connected bodies as persons who appear to the Scottish Ministers to exercise functions of a public nature under section 5(2)(a) of the 2002 Act in accordance with the descriptions and functions set out in the table in the schedule.



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