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Thank you for the opportunity to respond to the Scottish Government consultation on **Extending Coverage of the Freedom of Information (Scotland) Act 2002 to Registered Social Landlords.** This response is on behalf of Wheatley Housing Group (WHG)WHGisScotland’s leading social housing, care and regeneration organisation, with 51,000 affordable homes in the RSLs that form part of the Group. These RSLs in WHG are:

* **Wheatley Housing Group,** a non-asset holding RSL and Group parent;
* [**Glasgow Housing Association**](http://www.gha.org.uk/), Scotland’s largest social landlord, with about 40,000 affordable homes in Glasgow;
* [**Dunedin Canmore**](http://www.dunedincanmore.org.uk/0/home/) **Housing**, owning or managing 8,000 homes in Edinburgh, the Lothians and Fife;
* [**Cube Housing Association**](http://www.cubehousing.co.uk/), with more than 3,400 homes across the West of Scotland;
* [**Loretto Housing**](http://www.lorettoha.co.uk/), with 1,200 affordable homes in the central belt;
* [**West Lothian Housing Partnership**](http://www.wlhp.org/), with almost 400 affordable homes;
* [**Barony Housing Association**](http://www.baronyha.org.uk/), which has 360 affordable homes and provides care and support to over 700 people in Central Scotland.

This consultation response has been considered and agreed by the WHG Board.

WHG and our RSLs operate under the principles of transparency, openness and accountability - core principles that should underpin all activities delivered by RSLs.

We already work to the spirit of Freedom of Information. As a Group we:

* respond to information requests from the public as if we were already covered by FOISA including applying the 20 days timescale for responding to requests and considering the Scottish Information Commissioner’s guidance and learning points from decisions so that our responses are of a high quality.
* have Publication Schemes based on the Scottish Information Commissioner’s Model Publication Scheme on each of our RSL websites. These Publication Schemes reflect recent guidance from the Commissioner’s office with links from the homepage including hyperlinks direct to information, easy to understand language and contact details for enquiries.
* make it easy for the public to request information through our published email address [**InformationRequests@wheatley-group.com**](mailto:InformationRequests@wheatley-group.com), our 24/7 contact centre, and frontline staff, and provide advice and guidance to the public seeking information through these routes and our Information Governance Team.

This approach supports our engagement activity through providing customers and other stakeholders with information in a readily available form, which in turn provides a platform for deeper, more robust dialogue on all aspects of our business including our services and how they are delivered. Furthermore, it reinforces that accountability and delivering value for customers are at the heart of everything we do. We therefore support the principles of freedom of information.

The proposed extension of FoISA to RSLs will have costs and require preparatory and on-going work for the RSLs in our Group. As requested, our answer to question 4 in your consultation attempts to quantify the business impact including costs.

Our responses to the specific question raised in the consultation are provided in the attached Annex.

Kind Regards

*For and on behalf of WHG*

**Annex 1: CONSULTATION QUESTIONS - WHG Response**

*WHG’s response to the questions below should be read in conjunction with its views as set out in the covering note we have provided as part of our response to this consultation.*

**1) Do you agree that freedom of information legislation should be extended to**

**Registered Social Landlords, as proposed in this consultation paper?**

**WHG Response:** we support the principle of extending freedom of information to RSLs.

**2) Freedom of Information can be extended to organisations that undertake**

**‘functions of a public nature’. You may wish to provide comments on how you**

**consider that RSLs undertake functions of a public nature, for example, with**

**reference to the factors referred to earlier in this paper.**

**WHG Response:** we do not agree with the assessment that RSLs undertake functions of a public nature.

We note that the analysis in the consultation is based on today’s regulatory context. We would wish to draw attention to the fact that some significant changes may be about to take place in the way in which the RSL sector is regulated, and that these have the potential to change the basis of the analysis in the consultation. We also disagree with a number of other elements of the analysis in the consultation, as set out in the table below.

|  |  |
| --- | --- |
| Factor consider in consultation | WHG’s view on rationale put forward in consultation |
| Statutory functions carried out by RSLS | RSLs providing Scottish Secure Tenancies does not justify the conclusion that RSLs carry out statutory functions. The primary concern in having Scottish Secure Tenancies is to ensure that tenants benefit from the protections and rights such tenancies provide. Private tenants also benefit from protections set out in statute including the planned strengthening of these rights through the Private Housing (Tenancies) (Scotland) Act 2016. We therefore believe there are inconsistencies in arguing that having one type of tenancy (SST) agreement leads to an organisation carrying out a statutory function while having another type of agreement (SPRT) does not, and that this inconsistency undermines the argument put forward for RSLs carrying our statutory functions.  The consultation also uses the requirement on RSLs to consult tenants on rent setting to argue that RSLs carry out a statutory function. It is important to note that while views from this consultation play a key role in determining rent levels, the actual decision-making on rents is for RSL Boards. In making these, and other decisions, these independent Boards weight up many factors including the views of customers before deciding, based on their expertise and responsibilities, what is in the best interest of the RSL they serve.  Furthermore, we do not agree that the existence of legislative obligations on an organisation equate to that organisation necessarily performing functions of a public or statutory nature. For example, there is extensive legislation on consumer rights but no suggestion that an organisation that delivers services in line with this legislation is necessarily performing a public function. |
| Public funding | Public funding is not the dominant source of RSL income. By way of illustration, in 2014-15, RSL turnover in Scotland was almost £1.6 Billion (source: SHR aggregate statement of comprehensive income) whereas government spending through its Affordable Housing Supply Programme with RSLs was around £215 Million (source: SG AHSP out-turn report). It is also worth noting that the funding that was made available was in most cases used by RSLs to leverage private funding. Turning specifically to WHG, in 2015/16 WHG RSLs received grant funding of £33 million out of their total turnover of £281 million. It should also be noted that on balance, between the two key types of affordable housing (social and mid-market rent) funded by the Scottish Government, the majority of funding for our new construction activities is sourced from the private sector. |
| Social Role of RSLs | The social role and value delivered by RSLs is driven by a desire to meet the needs of our customers and to ensure that the communities we serve are as vibrant and successful as possible, rather than direction from government. In this sense we would see RSLs as partners of government because of our shared agenda in this area, rather than an actor of government as the consultation implies. |
| Regulation and oversight | The regulatory environment for social housing is predominantly about ensuing tenants’ interests are served rather than the state prescribing how RSLs operate.  The expected changes to the regulatory environment as a result of proposed ONS reclassification will mean that the already limited involvement by the SHR in the operations and strategy of a RSL will all but disappear. This is an extremely significant change to the basis of the assessment set out in the consultation.  It is also worth noting that there are many sectors where regulation applies, including utilities and financial services. In some of these sectors, this includes price regulation, which does not apply to RSLs, and there is no suggestion that organisations that deliver these services are providing functions of a public nature. |
| Access to information | We would not agree that RSL customers are at a material disadvantage in terms of the provision of information. RSLs provide extensive information to the SHR that is available publicly. They also regularly consult with tenants on significant proposals including in relation to rents; they work (as WHG does at present) to the spirit of FOISA and involve their customers directly in the governance of their organisations. The effectiveness of this approach is borne out by the just over 90% tenant satisfaction with being kept informed about services and decisions quoted in the consultation document. |

**3) The proposed order would be expected to come into force on 1 April 2018.**

**Do you consider this a reasonable timescale, allowing for preparation for inclusion?**

**If not, you may wish to indicate what timescale you feel would be more appropriate and why.**

**WHG Response:** We consider that 1 April 2018 is a short timescale to allow for preparation, given that this may leave less than one year from the date of the proposed order. We would propose that 1 April 2019 would provide a more reasonable period for introducing the required processes and procedures.

**4) We would welcome comments on the draft partial Business and Regulatory**

**Impact Assessment provided at Annex A.**

**WHG Response:** we do not see an extension of Freedom of Information to RSLs as bringing significant new benefits to customers and the wider public, since WHG currently aims to deals with requests for information as though FOI applies.

Enquiries typically require about 15 hours of staff effort. For a full statutory adoption of FOI, we anticipate additional work and staff time will be required in developing management information and reporting frameworks including to meet the Scottish Information Commissioner’s requirements. At this stage we are assuming for planning purposes that preparing for FOI and on-going delivery will increase costs by between £100,000 and £200,000 per year (equivalent to between £2 and £4 per household served by the RSLs in the group).

**5) We would welcome comments on how these proposals might impact on ‘Equality Groups’ i.e. in respect of age, gender, race, religion, disability, sexuality, children’s rights etc. Comments will inform the Equalities Impact Assessment and Child Rights and Wellbeing Impact Assessment to be completed following consultation.**

**WHG Response:** we see no differential impact on the various “equality groups” relative to the public more generally from these proposals.

WHG is committed to ensuring it can identify and respond quickly to demographic changes and the needs of particular groups. We design products and services to respond to the particular needs, aspirations and priorities of equalities groups. This includes easy access to translation and interpretation services and distinctive offers including for older people and young people.