****

**Response to the Scottish Government Consultation on Extending Coverage of the Freedom of Information (Scotland) Act 2002 to Registered Social Landlords**

**Overview**

The Jimmy Reid Foundation (JRF) supports the Scottish Government’s proposal to extend the Freedom of Information (Scotland) Act 2002 to “all RSLs irrespective of size”[[1]](#footnote-1), by 1st April 2018[[2]](#footnote-2). The JRF agrees that “a ‘class description’ covering registered social landlords and setting out the function(s) considered to be covered by the order”[[3]](#footnote-3) is the simplest way to proceed. The JRF expects that for the right to remain robust, relevant and accessible, all RSLs must be required to answer the information request within 20 working days. The access to information rights currently held by council house tenants should match the access to information rights given to RSL tenants under the Freedom of Information (Scotland) Act 2002 (FoISA).

**Evidence**

The JRF notes the consultation is less that the normal three-month period, from 1st December 2016 – 23rd February, and that it takes place during the Christmas and New Year holidays. Given our few resources, this has placed a strain on our ability to meet the consultation deadline.

From our work, the JRF recognises that access to information is crucial to people enjoying their rights as well as being a right in itself.

The JRF agrees with the Campaign for Freedom of Information that the enforceable right to access information has become progressively weakened in Scotland due to changes in the way public services are delivered eg the creation of ALEOs and the privatisation of some services to the voluntary sector. The JRF is also alarmed that the ‘Time for Compliance (Scotland) Regulations’ changed the rules that presumed bodies would respond within a maximum of 20 working days, and increased the response time to a potential 60 working days for grant-aided and independent special schools.[[4]](#footnote-4) The JRF therefore seeks assurances that the response time of 20 working days, under Section 1 of FoISA, will equally apply to **all** RSLs.

We welcome the Child Rights Impact Assessment. Although the consultation is about compliance with Article 10 of the ECHR - the right to form an opinion by receiving and imparting information – reference is made to the impact of several key cases ruled on by the European Court of Human Rights (ECtHR) including MAGYAR HELSINKI BIZOTTSÁG v. HUNGARY[[5]](#footnote-5). In addition housing associations have been ruled as covered by the Human Rights Act 1998[[6]](#footnote-6) which has led to ‘Guidance for Social Housing Providers’ published by the EHRC.[[7]](#footnote-7) Therefore the JRF is disappointed that no human rights impact assessment was undertaken on a proposal to amend FoISA, although we note that a Business and Regulatory Impact Assessment(BRIA) was undertaken which suggests there is greater interest on the impact of rights compliance on the RSLs than the active enjoyment of rights by the public. The Equality and Human Rights Impact Assessment (EqHRIA) tool developed by the SHRC and the EHRC Scotland[[8]](#footnote-8) should have been used.

The Scottish Government states that “there are almost 160 non-local authority RSLs”[[9]](#footnote-9) and we agree with the proposal to extend FoISA to all RSLs, irrespective of size is the right approach. Whilst opinions are sought on RSL “subsidiaries”, insufficient information is provided to form an opinion. For example, on the numbers that exist and the nature of their functions. Therefore, please supply more information so we can agree an informed opinion.

Finally, we note that human rights are central to Scottish Government policy and we support that. For example the First Minister has said: ‘Human rights are central to our concept of inclusive growth – the concept we have put at the heart of our strategy of building a stronger economy and a fairer society… the Scottish Government “is looking at how we incorporate some of the other treaties and rights into our domestic law’.[[10]](#footnote-10) In addition, the Scottish Parliament has enhanced its scrutiny of human rights by establishing an Equalities and Human Rights Committee[[11]](#footnote-11) and since 2013, Scotland also has had a National Action Plan on Human Rights[[12]](#footnote-12). So, human rights compliance should have underpinned this consultation.

**Conclusion**

The JRF is pleased that RSLs will be covered by FoISA by 1st April 2018 and believe that is a sensible timescale for introduction of the public’s enforceable right to access information. Jurisprudence of the ECtHR also suggests that this decision was inevitable. In addition, ensuring that the public have a robust, enforceable right to access information is part of active democracy and fits with the current Scottish Government policy and legal commitments eg on ‘community empowerment’. We remain concerned about the issue of RSL ‘subsidiaries’ and request more information is made available, and quickly, to ensure we can reach an informed opinion within the proposed timescales.

**About Us**

The Jimmy Reid Foundation has been established in memory of Jimmy Reid and to continue the legacy of radical political thinking that his life represented.The Foundation is an independent ‘think tank’ and advocacy group focused on practical, policy proposals for transforming Scotland which are based on analysis and investigation of the current Scottish and global political, cultural and social situation. It includes the full range of progressive politics in Scotland.  All the work of The Reid Foundation is based on a series of underpinning principles drawn from Jimmy’s own thinking including: that society should be based on equality and social justice and that people should have the democratic power to influence their workplace and social institutions and justice can only come from peace and support for human rights.

**For further Information**

**Bob Thomson**

**Convener**

**The Reid Foundation**

741 Shields Road,

Glasgow

G41 4PL

**Phone:** 0141 424 0042
**Email:** bthomson741@btinternet.com

1. Pg 7 of the consultation <http://www.gov.scot/Resource/0051/00510874.pdf> [↑](#footnote-ref-1)
2. Pg 15, Ibid [↑](#footnote-ref-2)
3. Ibid [↑](#footnote-ref-3)
4. The Regulations are available at <http://www.legislation.gov.uk/ssi/2016/346/contents/made> [↑](#footnote-ref-4)
5. MAGYAR HELSINKI BIZOTTSÁG v. HUNGARY, Grand Chamber of the European Court of Human Rights Nov 2016 [↑](#footnote-ref-5)
6. London and Quadrant Trust v Weaver [↑](#footnote-ref-6)
7. Available on GB EHRC website <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-social-housing-providers> [↑](#footnote-ref-7)
8. For more information go to the dedicated website <http://www.scottishhumanrights.com/eqhria> [↑](#footnote-ref-8)
9. Pg 7 of the Consultation [↑](#footnote-ref-9)
10. Speech by FM on 9th December 2015. [↑](#footnote-ref-10)
11. See Scottish Parliament website <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/Equalities-Human-Rights-Committee.aspx> [↑](#footnote-ref-11)
12. Go to SHRC website <http://www.snaprights.info/what-is-snap> [↑](#footnote-ref-12)