

# **Consultation on the Freedom of Information (Scotland) Act 2002 (Time For Compliance) Regulations 2016**

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## INTRODUCTION

### **The Freedom of Information (Scotland) Act 2002 ('the Act')**

The Act provides a statutory right of access to information held by Scottish public authorities. These range from the Scottish Parliament and Government, to local authorities, NHS boards, higher and further education bodies, doctors and dental practitioners.

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. They are then subject to the full requirements of the Act and must therefore respond to written requests for information - ordinarily within 20 working days - and proactively publish information described in their Publication Scheme. They would also automatically become subject to the requirements of the Environmental Information (Scotland) Regulations 2004 (EIRs).

The Scottish Government brought forward Scotland's first order under section 5(1) of the Act in September 2013. Following consideration by the Parliament the order came into effect on 1 April 2014. The order extended coverage of the Act to certain trusts which have been created by local authorities to deliver sporting, cultural and leisure facilities and/or activities on behalf of the local authority(ies).

Following consultation in 2015, a further order has been laid extending the Act to include private prison contractors, providers of secure accommodation for children, grant-aided schools, independent special schools and Scottish Health Innovations Ltd. The Scottish Parliament has agreed the order which will come into effect on 1 September 2016.

This further consultation arises directly from responses to last year's consultation.

Please note, for the reasons set out on page 6, the consultation runs for a period of 8 weeks from **8 March to 3 May 2016**.

## BACKGROUND TO THE CONSULTATION

Responses to last year's consultation on extending coverage of the Act raised a number of concerns about the practical and administrative resource implications of coverage.

Specifically, given the statutory requirement to respond to freedom of information requests and reviews within 20 working days, the impact of school holiday periods on the ability of grant-aided and independent special schools to comply with this obligation was identified as a particular concern.

For example, the collective response from the grant-aided special schools noted the difficulties of school holiday periods; **Harmeny Education Trust Ltd** requested clarification regarding the definition of 'working day' (the same point being made by **The Royal Blind School** and the **Scottish Council of Independent Schools**) with the **Scottish Centre for Children with Motor Impairments** (SCCMI) noting that due to their 'term-time only structure' complying with a 20 working day deadline would not always be possible.

For reference, the Scottish Government's formal response to the consultation is available on the Scottish Government's [Citizen Space](#) consultation webpages. Pages 7-9 reflect the views of some of those grant-aided and independent special schools that responded.

The proposals set out below seek to address the specific issue of responding to freedom of information requests and reviews during school holiday periods.

## OUR CONSULTATION PROPOSALS

We are sympathetic to the practical administrative issues identified by several grant-aided and independent special schools during the consultation process, in particular the fact that many of these schools in effect close down for extended periods during the summer. This makes it difficult – if not impossible – to respond to information requests within the statutory 20 working days.

For the purposes of the Act, state schools come under their respective local authority. It is therefore the local authority that is obliged to comply with the requirements of the Act rather than the individual school.

However, the grant-aided and independent special schools will be separate public authorities responsible for responding to information requests in their own right. We therefore intend to bring forward regulations to address the practical difficulties this creates for these schools.

The proposed regulations are technical in nature and are specific to the grant-aided and registered independent special schools which are due to be brought within scope of the Act (from 1 September 2016).

Section 10(4) of the Act allows for regulations to be made varying the standard 20 working day response deadline – up to a maximum of having to respond by no later than the 60<sup>th</sup> working day after receipt of a request.

Similarly, section 21(6) of the Act allows for regulations to be made varying the standard 20 working day response deadline for responding to a requirement to review the handling of an information request (we note that, unlike at section 10, this provision does not state a maximum number of working days by which a review request must be responded to).

In accordance with the above powers, the proposed regulations require a response to an information request, or a 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 60<sup>th</sup> working day following the date of receipt of an information request (or request for a review).

This is intended to allow sufficient time to respond to FOI requests (and reviews) whilst taking into account school holiday periods. In effect, this means that only recognised school days are used in a calculation of when to respond to a request (or review) up to a maximum of 60 working days from the date of receipt.

For the purposes of these regulations we consider a school day to be defined as a day on which a school is ordinarily open to its pupils for the purpose of their school education.

Subject to consultation and Parliamentary process we propose that the regulations come into effect on **1 October** (sufficient time not being available for them to come into effect in tandem with the order extending coverage of the Act to the relevant schools).

# CONSULTATION PROCEDURES

## Timescale

As stated above, this consultation runs for a period of 8 weeks from **8 March to 3 May 2016**.

While, generally, Scottish Government consultations will run for a period of 12 weeks, a shortened period is proposed here for the following reasons:

- this further consultation is directly related to last year's consultation on extension of coverage and seeks to address a single issue arising from that consultation;
- the subject matter of this consultation affects a limited number of organisations who will be made directly aware of this follow up exercise and its timescale;
- a contracted consultation period should provide for sufficient time to assess responses and to bring forward legislation in time for it to complete the Parliamentary process ahead of coming into force to meet the identified policy objective.

## Impact Assessments

As part of the earlier consultation exercise both a Business and Regulatory Impact Assessment (BRIA) and an Equality Impact Assessment (EQIA) were developed. The final versions of these documents are available via the Scottish Government's [Citizen Space](#) consultation webpages.

Given the very specific, procedural nature of these proposals – which are a direct result of assessing the business impact of the earlier consultation on extending the Act - we do not propose to complete separate impact assessments.

As set out above, the proposals are in effect a technical change intended to mitigate the administrative impact of the decision to extend coverage of the Act to grant-aided and independent special schools.

In so far as there is a potential cost implication, this concerns the potential requirement (in the absence of the proposed regulations coming into effect) to ensure that appropriate resource is always available to ensure that information requests can be responded to within a statutory timeframe of 20 working days.

Given that the right to request information subject to the Act is available to all, any extension in the time available to an organisation to respond to a request is not in itself anticipated to have an impact on any particular equalities group.

Comments specific to any perceived business and regulatory - or equalities - related impact arising from these proposals are welcome as part of this further consultation exercise. Any such comments received will be reflected in revisions made to the BRIA and/or EQIA prepared in respect of the earlier consultation.

**DRAFT REGULATIONS**

*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.*

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 SCOTTISH STATUTORY INSTRUMENTS
 

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**2016 No.****FREEDOM OF INFORMATION**
**The Freedom of Information (Scotland) Act 2002 (Time for  
Compliance) Regulations 2016**

<i>Made</i>	- - - - -	***
<i>Laid before the Scottish Parliament</i>		***
<i>Coming into force</i>	- - -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10(4), 21(6) and 47(6) of the Freedom of Information (Scotland) Act 2002<sup>(1)</sup> 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.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016.

(2) These Regulations come into force on 1<sup>st</sup> October 2016.

(3) In these Regulations, “the 2002 Act” means the Freedom of Information (Scotland) Act 2002.

**2. —Grant-aided schools and independent special schools**

(1) This regulation applies to a request for information that is received by—

(a) a grant-aided school as defined in section 135(1) of the Education (Scotland) Act 1980<sup>(2)</sup>, or

(b) an independent special school listed in the Register of Independent Schools as set out in section 98 of the Education (Scotland) Act 1980 and which fall within paragraph (a) of the definition of “special school” in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(3)</sup>.

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(1) asp 13 as amended by the Freedom of Information (Amendment) (Scotland) Act 2002 asp 2.  
 (2) c. 44.  
 (3) asp 4.

(b) Where this regulation applies, subsections (1) and (3) of section 10, section 21(6) and section 47(4)(b) of the Freedom of Information (Scotland) Act 2002 have effect as if any reference to the twentieth working day were a reference to either —

(i) The twentieth working day disregarding any working day which, in relation to the school referred to in regulation 1, is not a school day, or

(ii) The sixtieth working day following the date of receipt,  
whichever occurs first.

(2) “school day” for the purposes of this regulation means in relation to a particular school a day on which the school is ordinarily open to its pupils for the purpose of their school education.

*Name*

[authorised to sign by the Scottish Ministers]

St Andrew’s House,  
Edinburgh  
Date

### RESPONDING TO THE CONSULTATION

Consultation commenced on 8 March 2016 and will run for 8 weeks. If you wish to respond to the consultation, please provide your response by **3 May 2016**.

You can respond to the consultation online by going to: <https://consult.scotland.gov.uk/freedom-of-information/time-for-compliance-regulations>, or you can send your response with the completed **Respondent Information Form** to:

[foi@gov.scot](mailto:foi@gov.scot) or

Freedom of Information Unit (2W)  
The Scottish Government  
St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

### Handling your response

We need to know how to handle your response and in particular, whether you are happy for it to be made public. Completing the attached **Respondent Information Form** will ensure that we treat your response appropriately. If you ask for your response not to be published we will treat it as confidential.

As the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998 any request made to it relating to the responses will be considered in terms of the appropriate legislation.

### What happens next

Once the consultation has finished all the responses will be analysed and considered. If you have given permission for your response to be made public and after we have checked that it contains no potentially defamatory material, your response will be made available to the public on the Scottish Government consultation web pages within 25 days of the consultation closing.

Subject to the consultation and Parliamentary process, we plan to formally respond to the consultation and lay regulations in the Scottish Parliament in June 2016 with the intention that these regulations come into effect on 1 October 2016.

### Comments and complaints

If you have any queries or comments about this consultation exercise please contact Andrew Gunn on 0131 244 5061 or Karen Lindsay on 0131 244 4615 or via the contact details above.

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002  
(Time for Compliance) Regulations 2016**



**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be returned with your response.

Are you responding as an individual or an organization?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

## Consultation Questions

1) Do you agree that the time available for grant-aided and independent special schools to respond to FOI requests - to allow for school holiday periods - should be extended (up to a maximum of not later than 60 working days after receipt of the request)?

*You may wish to provide information in support of your view.*

Comments

2) Do you agree that the time available for grant-aided and independent special schools to respond to FOI requests for a review - to allow for school holiday periods - should be extended (up to a maximum of not later than 60 working days after receipt of the request for review)?

*You may wish to provide information in support of your view.*

Comments

3) Please provide any further comments you wish to make in respect of these proposals and the terms of the draft regulations at **Annex A**.

Comments



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