

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Extension of Coverage of the Freedom of Information (Scotland) Act 2002 (FOISA) to Registered Social Landlords and their subsidiaries
Summary of aims and desired outcomes of Policy	To extend FOISA to cover Registered Social Landlords and their subsidiaries to the extent they undertake functions of a public nature in the interests of increasing openness and transparency
Directorate: Division: team	Directorate for Constitution and Cabinet Elections and FOI Division Freedom of Information Unit

Executive summary

The Freedom of Information (Scotland) Act 2002 provides a statutory right of access to information held by Scottish public authorities and those performing functions of a public nature.

The provisions of the Act can be extended to bodies that carry out functions of a public nature or which provide, under 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.

Bodies designated for the purposes of the Act become subject to the full requirements of the legislation and must therefore respond to written requests for information and proactively publish information described in their Publication Scheme. They are also automatically subject to the Environmental Information (Scotland) Regulations 2004 (EIRs).

Background

The Scottish Government consulted on proposals to designate RSLs as public authorities for the purposes of the Act between December 2016 and February 2017.

Following consideration of the responses a further consultation was undertaken on the terms of a draft order proposing to extend FOISA to RSLs, as well as RSL subsidiaries, on the basis of aligning information access rights to the existing powers of regulation and oversight exercised by the Scottish Housing Regulator. This second consultation ran from 6 December 2017 to 7 March 2018.

Designation of RSLs (and their subsidiaries) as public authorities for the purposes of the Act is intended to provide information rights to RSL tenants (and anyone else requesting information) mirroring those rights already available to anyone wishing to request information from a local authority landlord.

RSLs are already subject to the EIRS in relation to requests for environmental information.

The Scope of the EQIA

There is little data available with regard to those making information requests (though we note the Scottish Information Commissioner's biennial awareness research), particularly in terms of 'Equality Groups', and any specific barriers to accessing information which applicants from such groups may face.

Initial consultation invited comments in respect of the potential impact of the proposals on 'Equality groups', for example in terms of age, gender, disability, ethnic background or religion. In addition to the organisations affected by the proposals, the consultation paper was circulated to equality issue representative organisations including the Equality and Human Rights Commission, Inclusion Scotland, the Children and Young People's Commissioner Scotland and Age Scotland.

Subsequent consultation on the terms of the draft order provided further opportunity for interested parties to comment on equality related matters.

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Key Findings

A significant number of responses to the initial consultation commented on how the proposals might impact on 'Equality Groups', though few raised specific issues. The response from Inclusion Scotland reflected broad support for designation in respect of equality issues by making RSLs more accountable '[Designation] would provide these groups with more information on whether Housing Associations are taking equalities issues seriously and that their policies and practice is in line with equality and human rights law'. Most of those responding in respect of 'equality issues' considered that extending coverage to RSLs could only improve equity and fairness in access to information for all groups - including equality groups.

Several local authorities commented on this section, for example, Glasgow City Council noted that 'extending FOI to RSLs will give equality groups more opportunity to explore how RSLs are meeting their own particular requirements', Falkirk Council stating that 'all equality groups will benefit from the proposals as it will give them greater powers to obtain information' and North Ayrshire considering that 'transparency of decision making can only lead to better decision making which will benefit equalities groups'.

We would also note the comments from the Scottish Information Commissioner that 'FOI is an important component of civic engagement and accountability'. The Commissioner continued by noting that 'RSLs provide housing to some of the most vulnerable people in our society' and that 'It is a source of inequality that tenants of local authority provided social housing are entitled to information about their homes which tenants of RSLs are not...' The Commissioner concluded that 'the effect of coverage of RSLs would be to remove or mitigate existing inequalities'.

Several responses felt that designation would have no negative impacts on RSLs or tenants. For example, Trust Housing Association stated that 'this should not have a detrimental impact on the above groups if managed correctly'. The lack of impact was supported by responses including from the Argyll Tenants Panel as well as a number of others who felt that access should be 'fair to all'.

A number of responses considered that designation would make no difference as RSLs were already open and transparent. For example, Manor

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Estates Housing Association Ltd considered that 'the RSL sector....is an open and transparent sector, information in respect of designated groups of individuals is already readily available'. Similarly, Wheatley Housing Group commented they 'already design products and services to respond to the particular needs, aspirations and priorities of equalities groups'.

We note the responses, including from the Campaign for Freedom of Information in Scotland, commenting on the lack of an Equality and Human Rights Impact Assessment (EqHRIA) - though consider that both consultation exercises provided opportunity for views to be expressed specifically on Human Rights issues.

As such, comments made more generally concerning Human Rights, both in terms of the provision of housing as well as in regard to the right to access information are considered as part of the consultation response paper.

Recommendations and Conclusion

Of those commenting on equality issues as part of the consultation process, most agreed that if there were any likely impacts they would be positive ones in terms of improving equity and fairness and helping all those seeking information have better regulated access procedures to information held by RSLs.

We view the proposal to designate RSLs as public authorities for the purposes of FOISA as positive and, as we consider demonstrated by consultation responses, is only likely to extend rights of access to information to those from equality groups (as to all others) rather than restrict access to information for any particular group.

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 to which those requesting information 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.

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