

JustRight Scotland response to the Proposed Freedom of Information Reform (Scotland) Bill

About JustRight Scotland

JustRight Scotland is a registered charity (SC047818) established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality.

We provide legal advice and representation on human rights and equalities issues across a range of legal areas including: women's legal justice, trafficking and labour exploitation, EU citizen rights, migration and citizenship, disability and trans legal justice.

Whilst our work is specific to Scotland, our work covers both devolved and reserved policy areas, and as such we endeavour to respond to policy consultations across both Scotland and UK, where appropriate.

As public lawyers for people who face systemic inequalities, discrimination and disadvantage, we use the provisions of the Human Rights Act 1998 (HRA) in our work, daily. In addition to providing direct legal advice to clients, we also run outreach legal surgeries and helplines, deliver rights information, training and legal education, and contribute to research, policy and influencing work.

Our Response

Our response to the Proposed Freedom of Information Reform (Scotland) Bill, by Katy Clark MSP. This consultation invited views on proposals to update and reform freedom of information legislation in Scotland.

JustRight Scotland

JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703). Our Registered Office is: Room 1, 1st Floor, Libertas House, 39 St Vincent Place, Glasgow, G1 2ER.

Room 1, 1st Floor, Libertas
House, 39 St Vincent Place,
Glasgow, G1 2ER

W ▶ www.justrightscotland.org.uk
T ▶ @justrightscot

5. Which of the following best expresses your view of the proposed Bill?

JustRight Scotland (JRS) welcomes the opportunity to respond to this consultation, and we have engaged in numerous meetings and workshops to provide an informed response.

We support the aim of this consultation on strengthening people's access to information rights, and the underlying principles of enhancing transparency and accountability.

Nonetheless, we are only partially supportive of the proposed changes as we are concerned that implementation of these reforms could be detrimental to third-sector organisations delivering services of public nature and/or receiving public funding. We recognise the critical importance of freedom of information (FoI) as a tool to strengthen transparency and accountability, and a means of enforcing information rights for individuals and communities. However, we also acknowledge the need to take a proportionate and tailored approach to any changes to freedom of information legislation, which reflects the challenges the charitable sector faces.

We are concerned that the changes proposed in the consultation, depending on how they are implemented, could have considerable financial implications for our organisation and the services we provide in Scotland.

JRS provides direct legal advice and representation to people across Scotland in areas of law where there are gaps in access to justice, and we are the only legal experts in Scotland working on many of the issue that we address.

We operate four legal centres:

- I.Scottish Refugee and Migrant Centre
- II.Scottish Women's Rights Centre
- III.Scottish Anti-trafficking and Exploitation Centre
- IV.Scottish Just Law Centre

Each of our legal centres receives some of its funding from public sources, and as is true for many charities, we operate in a mixed funding environment. As such, differentiating between areas of our work that are publicly funded and those funded through grants from private charitable trusts and foundations, or other sources of income, can be challenging. That might be relevant to the impact on our time, should we receive a FoI request that requires us to separate information held in relation to publicly funded projects, from other work we might undertake.

We are also concerned that these changes could also create confusion and contribute to reducing public confidence in our work, should people use these FoISA provisions. Rules on what is covered and what is not covered by FoI are complex, and requestors may be unfamiliar with our mixed funding environment, meaning we might have the right to reject requests not covered by the extension, but with the risk that doing so might undermining public trust and confidence in our services.

In common with many charities, our publicly funded work tends to be leanly funded, with budgets just covering all the costs associated with running each projects. At present, we might struggle to resource an adequate response to additional

compliance requirements, if the manner in which the extension of FoI is implemented carries substantial financial implications, like allocating funding to training and support or recruitment of FoI officers, without additional funds in place.

Furthermore, JRS builds collaborative social justice models, working in partnership with third-sector and statutory partners in Scotland, UK, Europe and internationally with the shared aim of increasing access to justice and reducing inequality.

This year for example, we, and our third sector partners have provided free, confidential, impartial legal advice to thousands of people on issues ranging from advice and support to women and children fleeing domestic violence, to people facing homelessness and destitution, to people facing sexual harassment in employment or discrimination because of disability.

These projects cover wide-ranging issues and are funded through over two dozen different funding streams. We are also concerned that extending FoI to organisations that use collaborative models like ours could result in real difficulties in delineating what is covered by public funding, and it could create additional risks around reporting beyond public funds.

At JRS, we work in close collaboration with third sector organisations from across Scottish civil society. Not only are we concerned about the potential consequences for our own work, but we are also concerned about the potential impact on our partners, many of whom are smaller grassroots organisations and all of whom do important work on the frontline of social justice and human rights advocacy.

Without substantial, long-term, and adequate funding, we are concerned that many of these organisations might have to reallocate resources from service delivery to training and support, reducing the reach and impact of their services and harming the communities that rely on those services.

Finally, we are also concerned that any extension that designates voluntary organisations under FoI might be used to undermine the work carried out by third-sector organisations, if there is a risk that vexatious requests could overwhelm their limited capacity to respond. We are aware that there are protections in place in case of vexatious requests; nonetheless, we understand that at present, organisations bear the burden of proving the request was vexatious. We are concerned that the proposed changes might not offer enough protection from harm and might not prevent the system from being abused, especially for organisations like ours, on the frontline in tackling social justice issues.

7. Which of the following best expresses your view on the third/charitable/voluntary sector being designated under FoISA if it is publicly funded and the service is of a public nature?

We welcome the principle behind this proposal aimed at strengthening people's access to information rights. However, we think that a blanket proposal to designate the third sector under FoISA might not be the best solution. Particularly, we are concerned that the definitions used in the consultation around organisations that are publicly funded and that provide services of a public nature do not offer enough clarity to understand the parameters of what kind of funding the proposal would cover.

As mentioned above, we are also worried that such an extension of FoISA might create disproportionate barriers to third-sector organisations like ours, and we would welcome clarification on the statement made on page 15 that “if a potential provider does not wish to be covered, they need not tender”. We are among many third-sector organisations in Scotland that provide essential services to some of the most marginalised and vulnerable communities, and there is concern that the proposed approach could hinder progress and harm the communities we represent.

We also want to highlight other tools that can be used to strengthen people’s access to information rights. For example, the Scottish Government’s powers under Section 5 could be reviewed and used more frequently and consistently, as we have evidence that it can be done successfully, for example when Registered Social Landlords were added under FoISA.

JustRight Scotland already operates under significant compliance requirements as a law centre subject to dual regulation. As a Scottish Charitable Incorporated Organisation (SCIO), we follow guidance and requirements of the Office of the Scottish Charity Regulator (OSCR). Our legal services are provided through a Limited Liability Partnership, JustRight Scotland LLP, which is regulated by the Law Society of Scotland.

Nonetheless, despite the rigorous reporting requirements that we and other third sector organisations fulfil to the authorities funding us, as well as to our own regulators, we recognise that these systems should be strengthened, and we do support proposals aimed at achieving greater transparency by third-sector organisations and increased information rights for the public and for communities.

9. Which of the following best expresses your view on creating a statutory duty to publish information?

Whilst we welcome the transparency that would come with wider availability of key information in the public domain, we are concerned that a statutory duty to publish might have a detrimental impact on third-sector organisations, if the requirements are costly to comply with and organisations have limited resources, skill and capacity to fulfil their obligations.

13. Any new law can have a financial impact which would affect individuals businesses, the public sector, or others. Do you think any cost is outweighed by the public interest benefit?

As set out above, we are concerned that the financial implications of the proposed changes might be hard to manage for some third-sector organisations, including our own. We already work with limited time, resources and staffing, and a burdensome obligation under FoISA might have a detrimental impact on the services we deliver and the communities we serve.

14. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief,

sex or sexual orientation. What impact could this proposal have on particular people if it became law?

Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law? Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

Transparency and accountability are important to us at JRS, and we have ourselves used FoI and information rights in order to secure important gains for our clients and the communities we serve. To that end, we support in principle an extension of freedom of information rights for individuals and communities. However, we are concerned that if a decision is taken to extend FoISA to third-sector organisations, work must be done to ensure that a proportionate and tailored approach is taken, which reflects the particular challenges the charitable sector faces and the role it plays in delivering public services, in partnership with the statutory and private sectors.

Finally, JustRight Scotland, like many third-sector organisations, provides vital services to some of the most marginalised and vulnerable groups in our society, including in areas such as gender-based violence, trans, and LGBTQ+ rights and immigration. We are also concerned that protections are put in place to ensure that organisations like ours are not targeted by vexatious FoI requests, in an attempt to drain resources, obstruct service delivery or silence our organisation and our partnerships.

For further information, please contact JustRight Scotland at:
jrfa@justrightscotland.org.uk

14.03.2023