

**REPORT TO:** POLICY AND RESOURCES SOMMITTEE - 14TH SEPTEMBER, 2009

**REPORT ON:** CONSULTATION BY SCOTTISH MINISTERS ON REDUCING THE TERM OF CERTAIN EXCEPTIONS WITHIN THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)

**REPORT BY:** DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)

**REPORT NO:** 455-2009

## **1.0 PURPOSE OF REPORT**

1.1 The Committee's views are invited on the Scottish Government's proposal to amend FOISA to require older information held by Scottish public authorities to be made available at an earlier date than at present.

## **2.0 RECOMMENDATIONS**

2.1 The Committee is asked to support the proposals.

## **3.0 FINANCIAL IMPLICATIONS**

3.1 There are no financial implications arising directly out of this Report.

## **4.0 MAIN TEXT**

4.1 The Scottish Government issued a Consultation on reducing the terms of certain exceptions with FOISA on 7th July. The Consultation can be found at <http://www.scotland.gov.uk/Publications/2009/07/01094653/0>.

4.2 FOISA provides a general entitlement for anyone to request information that is held by Scottish public authorities. If it is held by the authority the information must be provided unless certain conditions or any of the 17 exemptions apply which are described in FOISA in sections 25 to 41. The application of these exemptions is not mandatory, and if a public authority chooses to do so it may still release the information. Some exemptions are subject to a 'public interest test', where the authority has to make a judgement about whether release would be in the best public interest despite the exemptions applying.

Eight of the most commonly used exemptions can be applied by public authorities to withhold information until it is 30 years old ("the 30 year exemptions"). If applied the information does not have to be provided to a requester until the time limit has expired. The Scottish Government propose to reduce this timescale to 15 years.

4.3 The exemptions in FOISA affected by the proposal are:-

Section 28	Relations within the UK
Section 29	Formulation of Scottish Administration policy
Section 30	Prejudice to the effective conduct of public affairs
Section 33(1)	Commercial interests and the economy
Section 36	Confidentiality
Section 37	Court records

Section 40      Audit functions

Section 41(a)    Communications with Her Majesty, other members of the Royal Family or with the Royal Household.

4.4      For the reasons described below, in practical terms the Scottish Government believe the proposed amendment to FOISA may affect relatively few requests for information.

- A small proportion of the records created by a public authority are retained in the long term. Most records are produced in the course of routine administrative operations and are destroyed at regular intervals.
- Most requests for information which are made under FOISA are, in their experience, for records which were created in recent years. People are naturally most concerned with current issues. This is borne out by the Scottish Information Commissioner's experience, who has rarely had to consider an appeal case concerning historical information.
- They suspect that even where requests are made for older information, for example after 20 years, an authority may choose not to apply exemptions.

4.5      Responses have been requested by 30th September.

## **5.0      POLICY IMPLICATIONS**

5.1      This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues in connection with these.

## **6.0      CONSULTATIONS**

6.1      This report has been the subject of consultation with the Chief Executive, the Depute Chief Executive (Finance) and all other Chief Officers.

## **7.0      BACKGROUND PAPERS**

7.1      None.

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Depute Chief Executive (Support Services)

DATE: 2 September 2009