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Kenneth Gibson
Convenor
Finance Committee
Scottish Parliament
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Dear Kenneth,

Freedom of Information (Amendment) (Scotland) Bill

In tandem with the Committee's consideration of the FOISA Amendment Bill, and in light of recent comment in the media and the content of some of the responses received to the call for evidence I thought it might be helpful if I provided you with some background information on the Scottish Government's approach to extension of coverage and the wider transparency agenda.

As you may know, the Freedom of Information (Scotland) Act 2002 already contains order-making powers to extend coverage to bodies who appear to the Scottish Ministers to exercise functions of a public nature or are providing under a contract made with a Scottish public authority any service whose provision is a function of that authority. While the order-making power has not yet been used the power to extend coverage has always been in the legislation.

I would emphasise that no amendment to the existing law is needed in order to extend coverage – and none of the provisions in the Amendment Bill impact on the existing power.

The Scottish Government consulted on extending coverage of the Freedom of Information (Scotland) Act in 2010. Organisations considered for coverage included certain contractors and bodies set up by local authorities to provide leisure, cultural and sport services. In conclusion to the consultation the Scottish Government agreed to defer a decision on extension until the proposed Freedom of Information (Amendment) (Scotland) Bill had been considered by the Scottish Parliament. In addition, the Scottish Ministers are acutely aware of the current economic climate and concerns over the impact additional regulation on hard pressed businesses could have at this time.

While confirming that the Scottish Government will return to the issue of extension following completion of the FoI (Amendment) (Scotland) Bill I would also wish to draw the Committee's attention to the Scottish Government's commitment to consult on the far broader issue of a

Scottish transparency agenda. The Scottish Government has always considered transparency as integral to effective and efficient administration and seeks to build transparency into policy delivery. I would draw your attention to two examples of this objective in practice.

The Scottish Housing Charter

The Scottish Housing Charter came into effect in April 2012. Transparency is a key element in the Charter which sets out standards and outcomes that tenants can expect from social landlords, in terms of the quality and value for money of the services they receive, the standard of their homes, and opportunities for communication and participation in the decisions that affect them. The Charter contains specific outcomes on communication and participation as well as around obtaining information allowing informed choices about available housing options.

The charter is regulated by the Scottish Housing Regulator (SHR). It is intended to provide the basis for the SHR to assess and report on how well landlords are performing. This will enable the Regulator, tenants and other customers, and social landlords to identify areas of strong performance and areas where improvement is needed. The Regulator's reports will also give the Scottish Government information which will help it ensure that public investment in new social housing goes only to landlords that the Regulator assesses as performing well.

In consultation with stakeholders, Scottish Ministers will review the Charter's effect on the quality and value of social landlords' services, and its value to tenants and other customers, social landlords and the Scottish Housing Regulator. The review will start within two years of the Charter coming into force.

Procurement Reform Bill

The Scottish Government is also committed to introducing a Procurement Reform Bill - one aspect of the continuing public procurement reform programme aimed at improving public sector procurement in Scotland. Consultation on the draft Bill commenced on 10 August and clearly identifies transparency as a key theme running through the legislation.

For example, the executive summary of the consultation paper specifically reflects the centrality of transparency to the objectives of the Bill:

In order to realise the full potential of procurement, we need to ensure that the legal and policy frameworks for public procurement in Scotland are transparent, responsive and fit for purpose.

The Bill will establish a national legislative framework for sustainable public procurement that supports Scotland's economic growth by delivering economic, social and environmental benefits, supporting innovation and promoting processes and systems which are transparent, streamlined, standardised, proportionate, fair and business-friendly.

I would urge the Committee to consider the very real impact that procurement reform could have on the availability, to the public as well as to the private sector, of information relating to public sector spending.

Freedom of Information Act 2000 – post legislative scrutiny

Finally, I would also draw your attention to the recently published report by the House of Commons Justice Committee on post-legislative scrutiny of the Freedom of Information Act 2000.

In assessing the operation of the Freedom of Information Act, including questions of openness, transparency, accountability and extension, the committee concluded that, while 'openness should follow public money when public services are outsourced...in our view this can best be achieved through clear and enforceable contract provisions rather than by designating commercial companies under the Act, which should be retained as a last resort.'

I am currently persuaded that the UK committee's position on this issue is the right one; it is right that the public should be able to access information on how their money is spent, and I believe the most appropriate avenue to exercise that right is through the public authority spending the money, for even where services are outsourced, the public authority remains accountable for that expenditure.

Scottish Government consultation on extension of coverage

The House of Commons committee's position would seem to reflect responses to the Scottish Government's earlier consultation on extension of coverage which, while confirming the importance placed on understanding how public money is spent, considered the public authority to be the most appropriate – and efficient - point of contact and access route for information. Responses also showed no compelling evidence of a problem or of unmet demand for information.

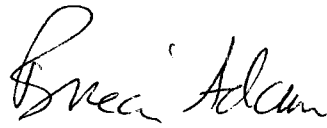
It should perhaps also be noted that, while consultation responses showed near universal support for the principles of transparency, openness and accountability as a means to ensuring organisations in receipt of public funds are effectively scrutinised, there was also considerable concern about the potential resource implications and administrative burden of extension – particularly in the current economic climate. The Government is of course also committed to a programme of better regulation to ensure the obligations on business are proportionate.

A number of responses considered that alternative methods should also be explored in furthering the aims of transparency, openness and accountability. The Scottish Government agrees that a full range of initiatives should be pursued in promoting transparency across the wider public sector – both by statutory and non statutory means. For example, in addition to the two examples highlighted above, the Government has also trialled and consulted on 'DirectScot' - a prototype for a Scottish public services portal. The aim of this is to provide people and businesses with a simpler view of all services available to them.

Conclusion

I would conclude by reiterating the point that the power to extend coverage is already contained within the legislation - and that Scottish Ministers do not consider it appropriate to extend coverage at this juncture. However, I would also re-emphasise that Scottish Ministers are determined that their ongoing commitment to transparency is put into practice in as many ways as possible – as evidenced by the examples above as well as by such initiatives as DirectScot.

I hope the above information is of interest. I look forward to meeting the Finance Committee on 12 September.



BRIAN ADAM