

# Freedom of Information (Amendment) (Scotland) Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 8

Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Before section 1

**Elaine Murray**

**8** Before section 1, insert—

**<Purposes of FOI Act**

Before section 1 of the FOI Act there is inserted—

**“A1 Purposes**

The purposes of this Act are, consistent with the Scottish Parliament’s founding principles of openness, accessibility and accountability—

- (a) to increase progressively the availability of information held by Scottish public authorities in order—
  - (i) to enable more effective public participation in the making and administration of laws and policies,
  - (ii) to promote the accountability of Scottish public authorities, and
  - (iii) to facilitate the informed discussion of public affairs,and, in doing so, enhance respect for the law and promote good government, and
- (b) to provide an enforceable right of access to information held by Scottish public authorities or persons providing services for them in accordance with the principle that information should be available to any person requesting it.”>

### Section 1

**Nicola Sturgeon**

**Supported by: Elaine Murray**

**1** Leave out section 1

## After section 1

### Nicola Sturgeon

2\* After section 1, insert—

#### <Designation of authorities

(1) In section 5 (further power to designate Scottish public authorities) of the FOI Act, for subsection (5) there is substituted—

5 “(5) Before making an order under subsection (1), the Scottish Ministers must—

(a) consult—

(i) every person to whom the order relates, or

(ii) persons appearing to them to represent such persons, and

(b) also consult such other persons as they consider appropriate.”.

10 (2) After section 7 of the FOI Act there is inserted—

#### “7A Reports on section 5 power

(1) In accordance with this section, the Scottish Ministers must lay before the Parliament reports about the exercise of the section 5 power.

(2) The first report is to be laid on or before 30 June 2016.

15 (3) Each subsequent report is to be laid no later than 3 years after the date on which the previous report is laid.

(4) A report must—

(a) state whether the section 5 power has been exercised during the reporting period, and

20 (b) as the case may be—

(i) explain how the power has been exercised during the reporting period (and why), or

(ii) give the reason for leaving the power unexercised during the reporting period.

25 (5) A report may—

(a) summarise any response to a consultation carried out during the reporting period as regards the exercise of the section 5 power,

(b) indicate any intention to exercise the power in the future,

30 (c) include such additional information as the Scottish Ministers consider appropriate.

(6) In this section—

“reporting period” means—

(a) in the case of the first report, period of at least 3 years preceding the date on which the first report is laid,

- 35 (b) in the case of a subsequent report, period of time from the date on which the previous report is laid until the date on which the subsequent report is laid,  
“section 5 power” means order-making power conferred by section 5(1).”.>

**Elaine Murray**

- 2A** As an amendment to amendment 2, line 9, leave out from <such> to end of line and insert <members of the public and other interested parties.”.>

**Elaine Murray**

- 2B** As an amendment to amendment 2, line 9, at end insert—  
<( ) The Scottish Ministers must have due regard to any responses made to the consultation under subsection (5) in deciding how to proceed in relation to the order.”.>

**Elaine Murray**

- 2C** As an amendment to amendment 2, line 14, leave out <2016> and insert <2013>

**Elaine Murray**

- 2D** As an amendment to amendment 2, line 15, leave out <3 years> and insert <12 months>

**Elaine Murray**

- 2E** As an amendment to amendment 2, line 25, leave out from <may> to end of line 27 and insert <must also—  
(a) state whether any consultation has been carried out during the reporting period as regards the exercise of the section 5 power,  
(b) summarise any responses made to such a consultation, and  
(c) explain how any such responses influenced the decision on whether to exercise the section 5 power.  
( ) A report may also—>

**Elaine Murray**

- 2F** As an amendment to amendment 2, line 33, leave out <3 years> and insert <12 months>

**Elaine Murray**

- 9** After section 1, insert—  
**<Duty to exercise power to designate Scottish public authorities**  
After section 7 of the FOI Act there is inserted—  
**“7A Duty to exercise power to designate Scottish public authorities**  
(1) The Scottish Ministers must—

- (a) lay before the Scottish Parliament reports setting out proposals for the exercise of the order-making power conferred by section 5(1), and
  - (b) no later than 20 working days (excluding days when the Parliament is in recess) after laying a report under paragraph (a), lay (under section 72(2)) a draft of a statutory instrument containing an order implementing those proposals.
- (2) The first report under subsection (1) must be laid on or before 30 September 2013.
  - (3) Each subsequent report must be laid no later than 12 months after the day on which the previous report is laid.
  - (4) Subject to subsection (5), an order under section 5(1) made by virtue of subsection (1) must provide for the bodies listed in the order to be designated as Scottish public authorities with effect from the day after the order is made.
  - (5) The order may, in exceptional circumstances, provide for the designation of a body as a Scottish public authority to take effect on a later date than that specified in subsection (4).
  - (6) If an order makes provision of the kind mentioned in subsection (5), the Scottish Ministers must lay, along with the draft statutory instrument containing the order, an explanation of the exceptional circumstances.
  - (7) The Scottish Ministers need not comply with subsection (1) if, at the time when a report under paragraph (a) of that subsection would (but for this subsection) be due to be laid, there are no bodies eligible for designation as Scottish public authorities under section 5(1) which have not already been so designated.”>

**Elaine Murray**

**10** After section 1, insert—

**<Protection of rights to access information**

After section 7A of the FOI Act there is inserted—

**“7B Protection of rights to access information**

- (1) Subsection (2) applies where—
  - (a) a Scottish public authority proposes to make arrangements for another person (other than another Scottish public authority) to exercise any of its functions or provide services on its behalf, and
  - (b) the proposed arrangements are not arrangements that will result in—
    - (i) the person being a Scottish public authority within the meaning of section 3(1)(a)(i) or (b), or
    - (ii) information relating to the functions or services being regarded as information held on behalf of the authority within the meaning of section 3(2)(b).

- (2) The arrangements made by the authority must include provision ensuring that the rights of persons to access information relating to the functions or services will be at least equivalent to the rights that those persons would have under this Act in relation to that information if the authority continued to exercise the functions or, as the case may be, provide the services itself.”.>

**Elaine Murray**

11 After section 1, insert—

**<Information relating to performance of contracts**

In section 3 (Scottish public authorities) of the FOI Act, after subsection (3) there is inserted—

“(3A) Subsection (3B) applies where—

- (a) a person (“the contractor”) is providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority,
- (b) the contract was entered into after the day on which this subsection came into force, and
- (c) the total sum to be paid by the authority under the contract exceeds £1 million.

(3B) Information of the type mentioned in subsection (3C) is to be regarded, for the purposes of subsection (2)(b), as information held on behalf of the authority.

(3C) That information is information, relating to the performance of the contract, which is held by—

- (a) the contractor,
- (b) any person sub-contracted to provide the service or any part of it (“a sub-contractor”), or
- (c) any person holding information on behalf of the contractor or a sub-contractor.”.>

**Section 4**

**Nicola Sturgeon**

3 In section 4, page 2, line 10, leave out <after subsection (1) there is inserted> and insert—

<( ) in subsection (1), the words “subsection (1) of section 57 or” are repealed,

( ) after subsection (1) there is inserted—

“(1ZA)The Scottish Ministers may by order—

- (a) make provision modifying any rule in accordance with which a record becomes a “historical record” for the purposes of this Part, and
- (b) do so by amending this Part or otherwise.

(1ZB)Provision by virtue of subsection (1ZA) may (in particular) state that a record becomes such a “historical record”—

- (a) in relation to the exemption under section 41(a), at the end of—

- (i) a specified period (not exceeding 30 years) beginning with the date on which the record is created or a particular date in the calendar year following that date, or
  - (ii) a specified period (not exceeding 30 years) beginning with the occurrence of an event apart from the creation of the record,
- (b) in relation to any other exemption under Part 2, at the end of a specified period (not exceeding 30 years) beginning with the date on which the record is created or a particular date in the calendar year following that date.>

**Nicola Sturgeon**

- 4 In section 4, page 2, line 11, after <(1)> insert <or (1ZA)>

**Nicola Sturgeon**

- 5 In section 4, page 2, line 14, at end insert—

<( ) in subsection (2)—

- (i) after the words “subsection (1)” there is inserted “or (1ZA)”,
- (ii) for the words “transitional provisions and savings” there is substituted “supplemental, incidental, consequential, transitional, transitory or saving provision”.>

**Nicola Sturgeon**

- 6 In section 4, page 2, line 14, at end insert—

<( ) In section 72 (orders and regulations) of the FOI Act, after the words “59(1)” in subsection (2)(b) there is inserted “or (1ZA)”.>

**Long Title**

**Nicola Sturgeon**

- 7 In the long title, page 1, line 2, after <to> insert <the designation of authorities,>

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