

## **POLICY NOTE**

### **THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (SCOTTISH PUBLIC AUTHORITIES) AMENDMENT ORDER 2013**

#### **SSI 2013/126**

The above Order was made in exercise of the powers conferred by section 4(1) of the Freedom of Information (Scotland) Act 2002 (“the Act”). That power provides, in section 4(1)(a), that the Scottish Ministers may, by order, add a body or office holder to those listed in Schedule 1 of the Act, so designating it as a “Scottish public authority” for the purposes of the Act. A body or office holder may only be added provided that, as set out in Section 4(1)(a), any such body or office holder is not for the time being listed in Schedule 1 and is either a part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions (the definition of mixed functions or no reserved functions to be construed in accordance with paragraphs 1(4) and 2 of Part III of Schedule 5 to the Scotland Act 1998). The power also provides, in section 4(1)(b), that the Scottish Ministers may, by order, remove an entry for the time being listed in Schedule 1 to the Act. The Order is subject to negative parliamentary procedure, as set out under section 72(2)(a) of the Act.

#### **Policy Objectives**

The Order will insert three bodies – the Criminal Courts Rules Council, the Scottish Civil Justice Council and the Mobility and Access Committee for Scotland – within Schedule 1 to the Act so that those bodies will be required to comply with the Act from the date this Order comes into force. This will mean that anyone could, following that date, submit a request for information to these three bodies and they would have to respond in accordance with the requirements of the Act. The Order will also make two minor technical amendments to the Act, firstly, by removing the Central Advisory Committee on Justices of the Peace from Schedule 1 of the Act because that Committee no longer exists. Secondly, it will update the reference in Schedule 1 to ‘a Justice of the Peace Advisory Committee’ (JPAC) to ‘Justice of the Peace Advisory Committees established under the Justices of the Peace (Scotland) Order 2007’ to clarify that it covers all JPACs as established under that 2007 Order.

The Scottish Government supports freedom of information, seeing it as an essential part of open, democratic government and responsive public services. It is important that public bodies which are created and meet the legislative criteria for coverage are obliged to operate within the legislative framework of the Act, alongside all those already operating in this way. This will enable continued delivery of greater transparency, accountability and engagement, ensuring appropriate accessibility to information from such bodies. It is also important to remove reference to authorities which are no longer in existence.

In many instances where new bodies or office holders have come into existence since the commencement of the legislation (or have ceased to exist) Schedule 1 has been amended by the relevant legislation that either created or abolished the body. However this has not been the case with the three listed for addition to Schedule 1. The Mobility and Access Committee for Scotland has existed for some time, but was not included in the Act through the previous order under section 4 of the Act (which was made in 2008) because its future as a body was uncertain at that time. However, given its continued existence, the Scottish Government proposes that it should now be made subject to freedom of information legislation. The Order will also apply to the

amended Rules Councils. The new Scottish Civil Justice Council will be established on 28 May 2013, which is why the Scottish Government proposes that this Order should come into force on that date.

The three bodies to be added to Schedule 1 by this Order each meet the conditions set out in section 4(a) of the Act – they not already listed in Schedule 1 and they are either part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions. The Act and the Regulations will apply to the bodies added to Schedule 1 as soon as the Order comes into force.

### **Consultation**

Each of the three bodies to be added to Schedule 1 has been consulted on its inclusion and is aware of its obligations and future responsibilities in terms of the Act and associated Regulations.

The Scottish Information Commissioner has been consulted on the terms of the Order and is assisting the three authorities in preparing for the Act and associated regulations to apply to them.

### **Impact Assessments**

An Equalities Impact Assessment has not been completed for this Order as the Order has no particular impact on any equalities groups.

### **Financial Effects**

The Deputy First Minister & Cabinet Secretary for Infrastructure, Investment and Cities confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, on local government or on business.

Scottish Government

Strategy and Constitution Directorate  
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