



**The Campaign for Freedom of Information in
Scotland (CFoIS)
'Extending Designations under FoISA-
Response to Scottish Government Consultation'**

Overview

CFoIS believes that the Scottish Government should extend the Freedom of Information (Scotland) Act 2002 (FOISA) to further bodies to ensure the public's enforceable right to access information is robust and applies to services which are funded by the public £. Requiring bodies to follow a national system of accountability and transparency through a new section 5 order will achieve consistency in practice by bodies and establish equal access to the enforceable right at a time and on a topic that suits the public, journalists, Third Sector organisations or other person. The now overdue new Section 5 Order should equally designate persons or bodies that: exercise functions of a public nature **or** provide, under a contract with a Scottish public authority, a service whose provision is a function of that authority.

The impact will be significant and will restore the strength FoISA had when passed in 2002 and which has been significantly weakened due to how public services are delivered by those organisations originally designated for coverage. The impact will also be to increase the number of organisations originally omitted from coverage such as CoSLA or which have developed since 2002 such as in health and social care provision.

This consultation process raises an issue of emerging controversy which is the definition of public services. Increasingly the definition has been recalibrated and narrowed to focus on the delivery of obligations underpinned by statute rather than the broader interpretation used by the public. In respect of FoI rights, CFoIS urges a broader interpretation of public services. For example, a child receiving a 'recovery' service from a charity may consider it is necessary to deliver a UNCRC right but is not able to exercise their Article 60 right under FoISA, as the service is not considered 'public'. Such 'services' may not be considered to be a statutory right.

There is a lack of clarity and consensus as to what a 'service' under 'contract' with an existing designated Scottish public authority looks like. For example, the public authority pays for it annually through a grant rather than a 'contract' for service.

The consultation gives no indication of the number of bodies that will be designated as a result of this latest consultation. One rich source for a list of named bodies is already available due to the information proactively published under the FoISA Model Publication Scheme. The Guidance produced by the Scottish Information Commissioner in November 2018 states under Class 1 and 'about the authority' that there should be information listed on 'Subsidiary companies (wholly and part owned) and other significant financial interests' as well as 'Strategic agreements with other bodies'. CFoIS urges the Scottish Government to be bold and ambitious about the number and range of bodies captured in a new Section 5 order so that the public's enforceable right to openness, transparency and accountability are accepted as a condition of doing business with the public sector in Scotland and being funded by the public £. We now set out our reasons why.

Introduction

CFoIS welcomes this consultation which invites views on further extending the coverage of FOISA, with a focus on those who provide services on behalf of the public sector. There is a wide range of organisations that provide services on behalf of the public sector including those from the Third and private sectors as well as ALEOs which are a generic term for 'arm's length external organisations'. Although services are provided by one organisation, it may sub-contract all or part of the work for a public sector body. Whatever complex arrangements for delivery are set up, exercising rights and fulfilling obligations under FOISA must remain a simple process.

The consultation poses a number of questions which we have sought to answer in our detailed submission below. However, several can be addressed simply:

Question 1

Do you think that the Scottish Ministers should extend the Freedom of Information (Scotland) Act 2002 to organisations that provide services on behalf of the public sector? **Yes**

Question 3

Are there any services provided on behalf of the public sector by organisations that you think should be excluded from consideration? **No**

Question 4

Are there any conditions that you think should be satisfied before organisations providing services on behalf of the public sector become subject to FOISA? **No**

Question 5

Do you have any comments on whether extending FOISA to organisations providing services on behalf of the public sector is likely to impact on those organisations' ability to provide services in this way? **Third sector organisation already provide huge amounts of financial and impact information to justify the spend of the public £. It would be great if this information was pro-actively made public and would afford a benchmark in delivering public services.¹ It is noted that transparency and accountability are values increasingly promoted in the sector to build trust and as a requirement of OSCR.²**

Purpose of FOISA

This consultation fits exactly with the purpose of The Freedom of Information (Scotland) Act 2002 (FOISA) which is "An Act of the Scottish Parliament to make provision for the disclosure of information held by Scottish public authorities or by persons providing services for them; and for connected purposes."³

Legal Catch Up

The public supports access to information rights. Increasing the number of designations is effectively playing 'catch up' operationally and to satisfy public opinion. Scottish Information Commissioner polling in 2017 confirmed the trend:

- 94% agreed it is important for the public to be able to access information

¹ See the report 'Key Audit Themes' especially on 'Data collection and evaluating outcomes' reported by the Public Audit and Post Legislative Scrutiny Committee in its report at <https://sp-bpr-en-prod-cdnep.azureedge.net/published/PAPLS/2019/9>

² For example see OSCR website at <https://www.oscr.org.uk/guidance-and-forms/charity-investments-guidance-and-good-practice/8-providing-information-to-the-public/>

³ Introductory paragraph. Full text of FOISA at <http://www.legislation.gov.uk/asp/2002/13/contents>

- 77% would be more likely to trust an authority that publishes a lot of information about its work
- Strong public agreement on the type of information which should be made available by public authorities: how public authorities spend their money (94%), reasons for the decisions public authorities make (90%), how public authorities deliver their services and functions (94%)
- Strong support for contracts with other organisations (84%)
- Strong support for data and statistics about their performance (93%)⁴

Scottish Information Commissioner polling in 2019 confirmed support for extending designations as 80% of survey respondents agreed that **private** sector companies who work on contracts for public bodies should be subject to the same FOI laws as public bodies. As the public are often unaware of the nuances of precisely who is delivering services, it is reasonable to reflect on what we can learn about the type of information they expect to access regardless of who is delivering the service of a public nature. Respondents generally agreed that it was "extremely" or "very" important for public bodies to publish information about:

- how they spent their money (85%)
- the reasons for the decisions they make (80%)
- information on the contracts they have with other organisations (74%)
- information on how they deliver their functions and services (79%).⁵

Therefore, it is fair to conclude that the spend of the Public £ should come with an obligation to be designated under FoISA so that the public has an enforceable right to access information as well as a duty on the designated body to pro-actively publish information.

Policy and Legal Context

'Shaping Scotland's Parliament', the report of Scottish Consultative Steering Group to the Secretary of State for Scotland in December 1998 set out the values and principles of the reconvened Scottish Parliament and included that it is 'open, accessible and accountable'. FoISA was a part of the legal framework which made that happen along with other legislation including:

- The Scotland Act 1998 including Sections 29 and 57 which set out duties in respect of human rights law including ratified international treaties, such as Article 19 of the International Covenant on Civil and Political Rights (ICCPR).
- UK whistleblower legislation - The Public Interest Disclosure Act 1998 (PIDA)⁶
- UK Human Rights Act 1998
- The Community Empowerment (Scotland) Act 2015
- Developments in Human Rights Law such both under the ECHR regime and at the UN.

⁴ See Scottish Information Commissioner website at <http://www.itspublicknowledge.info/home/SICReports/OtherReports/PublicAwarenessResearch2017.aspx>

⁵ See Scottish Information Commissioner website at <http://www.itspublicknowledge.info/home/SICReports/OtherReports/PublicAwarenessResearch2019.aspx>

⁶ See UK Government website at <https://www.gov.uk/whistleblowing>

Enforceable access to information rights, underpinned by a robust enforcement regime, is part of a modern democracy. It is separate from other initiatives such as 'Open Data'.

Inconsistent and Incomplete Coverage of FoISA

Current 'designations' under FoISA are operationally inconsistent so weaken FoI rights. Therefore, CFoIS welcomes this consultation and its proposals which can address these issues.

Already a range of 'private bodies' are covered by access to information rights:

- GP and Dental practices are individually covered by FoISA as they operate as private companies.
- Under the Environmental Information (Scotland) Regulations EI(S)Rs private companies can be covered.
- Only some ALEOs are covered and there is no exact information on the number which exist in Scotland: leisure trusts are automatically covered under FoISA; ALEOs can be if they are set up for coverage by a public authority.
- Private prison contractors (added in a 2016 Section 5 Order) who provide a service under a contract made with a Scottish public authority.
- Section 6 of FoISA covers publicly owned companies which are automatically designated but it has proven to be difficult to assert this right as names are unknown.

CFoIS believes the challenge ahead will be on seven key areas:

1. Defining public functions and functions of a public nature.
2. Agreeing which organisations should be covered and adopting a consistent and transparent approach to the process.
3. Achieving assimilation in the definitions under FoISA and the definitions used under Section 6 of the Human Rights Act 1998 that coverage applies to those delivering public services and services of a public nature.
4. Understanding how services are practically delivered for a Scottish public authority as some may be delivered through a grants system or general funding rather than through a formal procurement, tendering and contract system.
5. Agreeing that the current system of designation is capable of being added to significantly at 'one go'. A trend has been allowed to evolve which adopts a piecemeal approach to the number of organisations added at one time. Also, a significant lead in time is permitted despite FoISA being in operation for nearly 15 years which has afforded a huge amount of case law from which we can learn, and which enables peer learning between organisations. A recent example is the significant lead in time for RSLs⁷ which was concerning as: they were already covered by the EI(S)Rs so should have had proper information management and disclosure systems in place; should have had staff training on EI(S)Rs rights which provided a useful base of knowledge on which to build; transparency and accountability were part of their regulation process under the Scottish Housing Regulator so were already skilled in proactive publication.

⁷ See Regulatory Framework of February 2019 at <https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#>

6. Agreeing that the current system of designation can be adapted to operate variably ie an organisation that wishes to deliver public services or services of a public nature can be designated under FoISA and coverage will be activated sometimes and in abeyance sometimes. Such an arrangement would cover situations whereby a service is needed on an urgent or flexible basis. A process would have to be instigated whereby an organisation applies in anticipation of delivering a service. If such a change cannot be effected under FoISA currently, then the post legislative scrutiny of FoISA can address the matter in a wider programme of reform.
7. Agreeing suitable resources to enable support from the Scottish Information Commissioner who has other demands on his time such as formal intervention with the Scottish Government. However, as a result of the post legislative scrutiny a further way of addressing poor performance by designated authorities may be chosen.

Definition of 'Public'

The Scottish public authorities covered by FoISA are defined by an opt in scheme managed by the Scottish Government first through section 3(1) and listed in schedule 1; or designated by order under section 5(1); or as a publicly owned company as defined by section 6. How the existing designated bodies deliver services has changed which prompts the need for this consultation. Additionally, not all organisations that should be covered are, given their functions, focus and funding, such as The Improvement Service, SOLAR and SOLACE.

According to the Scottish Government 'Public services touch on many aspects of everyday life – health, social care, education, early years, community justice, enterprise and skills – and play a crucial role in ensuring people's wellbeing.' Services and organisations are subject to reform which 'is supported by advances in digital technology, greater integration, effective partnerships, and the expectation that all services will work collaboratively to address the problems facing people and communities which cannot be meaningfully and effectively tackled by one organisation working alone'.⁸ In those generalisations such as 'wellbeing', there are specifics which define rights and set out obligations on the public sector such as by the Human Rights Act 1998 (HRA).

Human Rights, Public Services/Services of a Public Nature

An example of the impact of the inconsistent approach to defining services of a public nature, and therefore restricting designation, is evidenced by the recent addition of RSLs and their 160 + subsidiaries under FoISA. The Designation Order failed to apply to the provision of factoring services, yet people may reasonably consider factoring services a public service or a service of a public nature as:

- The Property Factors (Scotland) Act 2011 seeks to protect homeowners by providing minimum standards for property factors. It came into force on 1st October 2012.⁹

⁸ <https://www.gov.scot/policies/improving-public-services/>

⁹ Scottish Government website at <https://www2.gov.scot/Topics/Justice/law/17975/CommonRepair-CommonSense/PropertyFactorsScotlandAct2011>

- The Human Rights Act 1998 requires those delivering public services or services of a public nature to comply with the ECHR and it includes two relevant rights: the right to respect 'home and family life' under Article 8; the right to peaceful enjoyment of possession under Protocol 1 and so for homeowners factoring is a key element of respecting, protecting and fulfilling that right¹⁰. The ECHR and HRA are also given effect through the Scotland Act 1998.

It is useful to note that Registered Social Landlords (RSLs) were designated under FoISA on 11th November 2019¹¹ which is seventeen years after the promise was made. Since 2009, part of their business was ruled 'public' which made them liable under the Human Rights Act in the case of R (Weaver) v London & Quadrant Housing Trust¹².

It appears that only through appeal to the Scottish Information Commissioner will there be clarity on defining 'public service or service of a public nature' in respect of the 'subsidiaries' of RSLs: someone needs to make a Section 1 request under FoISA¹³, be refused it, seek an internal review, be refused it and then appeal to the Scottish Information Commissioner. The Commissioner has pointed out that he: 'cannot advise individual organisations on their own corporate structure, or on whether they are subsidiaries for the purposes of FOI law, and will only be able to consider individual cases in detail if an appeal is made under FOI or the EIRs or a compliance issue is investigated.'¹⁴

To put the onus on requestors of information is unfair. On such an important point clarity is needed and will influence the impact of this consultation. It is unrealistic to expect NGOs to take the lead in a climate where campaigning organisations such as CFoIS do not have the resources to pursue a labour-intensive project. For example, see the recent Equalities and Human Rights Committee Report on the Draft Budget 20/21 Inquiry which highlighted the challenges the Third sector currently faces.¹⁵

Using the same definition of public services and services of a public nature under the HRA and FoISA would achieve consistency and a degree of certainty for the requestor. Also, access to information rights has been ruled to be covered by Article 10 of the European Convention on Human Rights (ECHR) which therefore engages

¹⁰ Full text of ECHR is available on Council of Europe website at

<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=>

¹¹ The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 at <http://www.legislation.gov.uk/ssi/2019/143/contents/made>

¹² R (Weaver) v London & Quadrant Housing Trust [2009] EWCA Civ 587; [2010] 1 WLR 363; [2009] HLR 40, CA. This is a complicated area of law and has received significant attention from the EHRC at <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-social-housing-providers>

¹³ See website at

<http://www.itspubliknowledge.info/ScottishPublicAuthorities/NewAuthorities/RSLsandsubsidiaries.aspx>

¹⁴ Scottish Information Commissioner website at

<http://www.itspubliknowledge.info/ScottishPublicAuthorities/NewAuthorities/Whichsubsidiariesarecovered.aspx>

¹⁵ The Committee published its report, [Looking ahead to the Scottish Government's Draft Budget 2020-21: Valuing the Third Sector](#), on 7 November 2019.

the HRA. For example, Magyar Helsinki Bizottság v. Hungary at the European Court of Human Rights in 2016. It is useful to note that the British Government was authorised to intervene as a third party at the hearing on this case.¹⁶

Public Services in Statute

Additionally, there are organisations named in legislation which deliver public functions. As the Scottish Legal Complaints Commission states in its evidence on the post legislative scrutiny of FOISA:

‘We have noted in previous submissions to the Scottish Government (see papers since 2016 at <https://www.scottishlegalcomplaints.org.uk/reimagine-regulation>) that we co-regulate in the legal services sector alongside several other statutory bodies set up under Scottish Statutes that are not covered by FOISA. This gives members of the public, and others interacting with legal regulation, a patchwork access to information and is counter the Scottish Governments own ‘better regulation’ principle. This is a particular problem since the process of consumer complainants means some are dealt with by us, then passed to another body, then passed back to us – we can release information on the start and end stages, but they cannot access information on the middle stage. The public are often critical of the system about this, but we have to emphasise it has been Scottish Government choice of which bodies to cover and exclude, and is not something we can change other than by raising the issues for consideration in consultations such as this.’¹⁷

ALEOs

CFoIS would welcome information on the number, focus, composition and range of ALEOs that operate in Scotland, which we hope is now available through the Scottish Government’s work with Audit Scotland.

Pilots, Projects, Contracts and Procurement Terms

Third Sector organisations already provide a wide range of services due to funding from the UK and Scottish government as well as from the EU. Some will be reacting to service requests from a public authority but other ‘services’, also known as ‘projects’ and some of them will be pilots, will be initiated by the organisation due to gaps in existing ‘services’ or in response to an identified and evidenced problem eg mitigating the effects of child poverty and addressing the impact of domestic violence. FOISA need not disturb or undermine such important and life changing initiatives. Whether they are funded by a contract or a grant, there will be legal paperwork underpinning the agreement integrated with performance, outcome and impact expectations. Given the range of evidence gathered, pro-active disclosure of the anonymised information will be in the public interest and may even lead to increase uptake and roll out of the service for public good.

In reality public sector organisations will engage in a wide range of contracts with ALEOs and with the private sector that we cannot even imagine such as provision of financial grants/opportunities and to develop cross-sector leadership skills. There will also be more obvious contracts such as for transport and infrastructure,

¹⁶ Council of Europe website at <http://hudoc.echr.coe.int/eng?i=001-167828>

¹⁷ Written evidence to the Public Audit and Post Legislative Scrutiny Committee at https://www.parliament.scot/S5_Public_Audit/General%20Documents/18_Scottish_Legal_Complaints_Commission.pdf

diversifying local economies and initiatives designed to support business and economic growth. There needs to be more information available about 'services' but we agree that whoever delivers them, such as charities and voluntary organisations, ALEOs and (Private) companies should all be included.

Funding and Reputation

CFoIS acknowledges that the NGOs/Third Sector understands it builds trust through openness and transparency. Increasingly these values are also being adopted by purposeful business¹⁸. Already NGOs/ Third Sector organisations produce volumes of information to meet funding criteria and inform their membership. Therefore, it would be sensible to routinely pro-actively publish it to boost reputation and avoid the need to answer individual FoI requests that seek the same information. CFoIS agrees that extra money should be included in the tender to cover anticipated FoI coverage costs that are additional. The Third Sector is a broad mix of large, medium and small organisations ranging from the extremes of those which are very well resourced and influential and to those who constantly struggle to make ends meet. Adopting a new compliance framework will have cost implications for the latter. This is not an argument to favour the large Third Sector organisations as they may be able to absorb the additional costs. It is an argument in support of extra funds for the Third Sector.

It is useful to note that the 17 Sustainable Development Goals and 169 targets apply to business and transparency is key.¹⁹

Pace and detail of change proposed.

The pace of designations using the Section 5 power of FoISA has been slow and there is a need to speed up action and extend coverage broadly as a matter of priority. CFoIS suggests that Ministers might prioritise further designation by adopting the following approach:

- Procurement depends on the private company tendering for public services accepting their FoISA duties just as their HRA duties as well EI(S)Rs as well as declarations on the supply chain, modern slavery and data handling.
- If it costs the designated authority to process FoI requests, that spend should be included in the tendering size of the procurement budget – not from funds of third sector and NGOs.
- Acknowledgement that contracting out services has become a loophole in FoI rights and responsibilities, and the new Section 5 order must prevent that.
- Keeping services within the public sector and being realistic about what it costs to deliver them would make the FoI process so much simpler and easy to administer and access by the currently designated bodies. It would also make requests for information by the public easier.

Duties under Designation

The 'Explanatory Notes' which accompany FoISA state that:

¹⁸ For example see The Economist article on 28th November 2019 at

<https://www.economist.com/business/2019/11/28/encouraging-purposeful-business>

¹⁹ See UN website at <https://www.unglobalcompact.org/take-action/action-platforms/sdg-reporting>

- Section 1 ‘provides for the Act to cover the authorities, persons or office-holders specified in schedule 1 and publicly-owned companies’²⁰
- ‘Section 6 – Publicly-owned companies This section provides that, for the purposes of section 3(1)(b), a company is a “publicly-owned company” if it is wholly owned by the Scottish Ministers or by any other Scottish public authority or authorities listed in schedule 1 (except where the schedule 1 entry regarding the authority is limited to certain information).³³ Section 3(2) sets out the circumstances where, for the purposes of section 3(1), a company will be considered wholly owned by the Scottish Ministers or by any other Scottish public authority or authorities.³⁴ Publicly owned companies are, under the terms of section 3(1)(b), subject to the Act’s provision.’²¹

Under the Model Publication Scheme Scottish Government Ministers and all bodies designated under FoISA should already be making information available, pro-actively, on new bodies that it has set up or which it owns. The Guidance produced by the Scottish Information Commissioner in November 2018 states under Class 1 and ‘about the authority’ that there should be information listed on ‘Subsidiary companies (wholly and part owned) and other significant financial interests’ as well as ‘Strategic agreements with other bodies’. Therefore, a list of bodies which are and are not covered by FoISA should be readily available by examination of existing publication schemes. For example, an ALEO may have been established which operates outwith the FoISA regime.

Public Policy and Human Rights

Human rights should inform the design and delivery of FoISA and there are a range of domestic developments which impact on this consultation process:

- The Equalities and Human Rights Committee at the Scottish Parliament published a report with 40 recommendations on 26th November 2018.²²
- The report of the First Minister’s Advisory Group on Human Rights **Leadership** ‘Recommendations for a new human rights framework to improve people’s Lives’ made seven Recommendations on 10th December 2019.²³
- The Scottish Government has announced that it will incorporate the UNCRC into Scot’s law. Article 13 (1) states ‘The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.’

Conclusion

The consultation is about the designation of persons or bodies that: exercise functions of a public nature **or** provide, under a contract with a Scottish public authority, a service whose provision is a function of that authority. The narrative in the consultation focuses on general issues rather than specifics. CFoIS is

²⁰ para 5 at http://www.legislation.gov.uk/asp/2002/13/pdfs/aspen_20020013_en.pdf

²¹ Para 32 at http://www.legislation.gov.uk/asp/2002/13/pdfs/aspen_20020013_en.pdf

²²

<https://digitalpublications.parliament.scot/Committees/Report/EHRiC/2018/11/26/Getting-Rights-Right-Human-Rights-and-the-Scottish-Parliament-3>

²³ <http://humanrightsladership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

deliberately not going into naming and listing organisations as that narrows the focus and perpetuates inconsistencies. Instead, we encourage Scottish Ministers to be bold and ambitious for the public's right to know.

'FOISA applies to persons, bodies and officeholders who fall within the definition of a Scottish public authority as set out in the legislation.'²⁴ Although this seems a simple proposition it is a very complex matter which needs to be simplified through adopting a consistent definition of what is a public service and a service of a public nature. For example, if a body has a defined regulatory function in law or services are regulated by law then they should be designated. If a service is required in order to deliver a human right, then the body delivering it should be designated. CFoIS would welcome the Scottish Government's prompt action in addressing these issues.

By using this submission to highlight the inconsistencies, CFoIS is making the case to Scottish Ministers to include a wide range of persons or bodies in the new Section 5 Order as they already qualify for designation. The reality of defining and delivering the Section 5 order and its operation needs to first provide clarity on: 'description' of services, 'contract', 'service' and the impact of subcontracting.

Given the complexities, it is reasonable to conclude it is best to keep the system simple which can be achieved if the public sector delivered more services and functions directly. Realistically that is not possible in all cases, but it is certainly an issue which can be addressed especially if organisations tendering for public sector contracts complain about having to be open, transparent and accountable under FoISA.

About CFoIS

- Established in 1984 to improve public access to official information, to secure legal right to access information and to enforce that right.
- Original initiative came from Scottish Consumer Council.
- Believe in right of people to find out about how they are governed and how their services are delivered.
- Ensure access to information Acts are implemented effectively.
- Deliver training, provide briefings, write submissions and offer comment/analysis.
- Campaign on new and emerging issues requiring changes in practice/law. The rights of people, and the practice of government are not static.

For further information or to arrange a meeting to discuss this submission, please contact:

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²⁴ Paragraph 8.

Appendix 1

Section 5 of FoISA Further power to designate Scottish public authorities

At <http://www.legislation.gov.uk/asp/2002/13/section/5>

(1) The Scottish Ministers may by order designate as a Scottish public authority for the purposes of this Act any person mentioned in subsection (2) who—

(a) is neither for the time being listed in schedule 1 nor capable of being added to that schedule by order under section 4(1); and

(b) is neither a public body nor the holder of any public office.

(2) The persons are those who either—

(a) appear to the Scottish Ministers to exercise functions of a public nature; or

(b) are providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority.

(3) An order under subsection (1) may designate a specified person or persons falling within a specified description.

(4) An order under subsection (1) made by virtue of—

(a) subsection (2)(a) must specify the functions of a public nature which appear to be exercised;

(b) subsection (2)(b) must specify the service being provided.

[F1(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.]

Textual Amendments

F1S. 5(5) substituted (31.5.2013) by Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2), ss. 1(1), 7; S.S.I. 2013/136, art. 2