

Consultation on the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016

Thank you for the opportunity to comment on this consultation which seeks to vary the standard 20 day working response deadline for certain schools, to a maximum of not later than the 60th working day after receipt of a request, and to vary the standard working day response to a requirement for a review no later than the 60th working day. The consultation also clarifies the definition of 'working day' as applied to those schools.

As a general point, it may make it easier to refer to 'school days' as opposed to 'working days'

I responded to the initial consultation which considered further extension of coverage to contractors who run privately-managed prisons, providers of secure accommodation for children, grant-aided schools and independent special schools. I supported that extension and continue to support the Government's incremental approach to coverage.

Grant aided and registered independent special schools

I appreciate that these schools will be separate public authorities responsible for responding to information requests in their own right and I note the concerns expressed by some of these schools in the initial consultation and recognise that this further consultation is an attempt to address some of these stated difficulties.

Their two main concerns lie around the financial and administrative costs associated with the designation and also what should be considered to be a 'working day'. Many of these schools have requested that the order should modify or qualify the time for compliance in Section 10 of the Act and have requested that 'working day' should be defined as a working day within a school term and that if an information request is received during a school holiday, the clock should only begin to tick at the start of the next term.

I am responding to this consultation solely from a children's rights perspective and as such, I do not support this extension. My reasons are as follows:

- Varying the timescales would create a two tier system and therefore impact on our most vulnerable children and young people. I appreciate the arguments for flexibility and recognise that all designated organisations should be aiming to respond to a request as soon as possible, regardless of an extended deadline. I do not however feel that 'flexibility' is necessary in these cases (local authorities could also make the same arguments in terms of school holiday periods) and would argue against this as being a children's rights issue.
- These schools undertake the functions of a public nature, namely to provide school education (and in some cases social care). These are core functions of the State. They also are responsible for the most vulnerable of our children and young people. As such it is especially important as a matter of public interest to access relevant matters of expenditure and management information so as to ensure best value and transparency in the management of public funds. It is even more so in the case for these schools.

- I do not feel that the 20 working day response would pose an undue administrative burden. In her original response the Scottish Information Commissioner (SIC) noted that she was not aware of any arguments put forward to the effect that it would be impractical or disproportionate to designate grant-aided schools. The impact of designation in terms of volumes and the type of information requested, is unlikely to be unduly onerous.
- I do not agree that 'it would be difficult or in some cases impossible' to respond to information requests within the statutory 20 working days. (please note that there is no distinction made for schools in their duty to respond to subject access requests in 40 calendar days (it should also be borne in mind that both FOISA and subject access will cover information which is not specifically related to the child's education and so may not require teaching staff input)
- SIC noted that the key to managing impact is to be prepared and gave an offer to provide training and support to any new bodies covered by FOISA. That there will be some impact is clear, but this can be minimised by ensuring that appropriate systems are in place and staff properly trained to deal with requests. I would therefore support allowing for adequate time before enactment for the schools to ensure their systems are in order.

Impact Assessments

I note that both Business and Regulatory Impact Assessment and an Equality Impact Assessment were conducted as part of the initial consultation. I would be interested to see if any Children's Rights and Wellbeing Impact Assessment (CRWIA) has been carried out on or around this consultation.

Concluding comments

In my previous response I stated that I was pleased to support the extension of coverage to those schools that were hitherto not included.

I feel strongly that the same rules should apply to these schools. The right to access information about the education provided to our children timeously should be provided, regardless of whether the education is being provided by a local authority or an independent special or grant-aided school.

Tam Baillie
Children and Young People's Commissioner Scotland
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