

# Scottish Environment LINK

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Freedom of Information Unit  
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28 May 2001

Dear Ms Corcoran

## **FREEDOM OF INFORMATION SCOTTISH EXECUTIVE CONSULTATION ON DRAFT LEGISLATION**

### **Introduction**

Scottish Environment LINK is the liaison body for Scotland's voluntary sector environmental organisations. LINK has a membership of 36 bodies, in turn supported by half a million people.

LINK member bodies are pleased to see draft legislation brought forward the aim of which is to improve the access - and conditions of that access - by the public to information about Scotland's administration. NGOs, such as LINK member bodies, welcome opportunities to work in partnership with Government, but this is greatly enhanced by access to official information. Members welcome the proposals for a new Scottish Information Commissioner whose independence and impartiality will be crucial to the effective implementation of the legislation.

This submission addresses a number of areas in the draft legislation where views or concerns are shared by a number of LINK member bodies (listed at the foot of this letter). However, it does not address all sections of the Bill nor does it supercede detailed responses submitted by constituent organisations of LINK.

### **Key points**

LINK bodies wish to flag up three particular concerns about the draft legislation, which they believe run contrary to its aspirations, could represent a diminishment of the existing rights of access, and appear contrary to the founding principles of the Scottish Parliament.

- Section 12(2) Excessive cost of compliance - This section should be amended. People may choose to take part in organised campaigns as a means of expressing their point of view; this

does not diminish the existence or value of their opinion. In the event that excessive costs are cited as a reason for withholding information, the Commissioner should be responsible for deciding whether such a reason is allowable. S/he may, for instance, be able to encourage the relevant agency to the information in an easily accessible way (eg via the internet), and inform the requesters of this.

- Section 28 Formulation of Scottish Administration policy etc - Section 28(1) should be amended. It runs against the spirit of the legislation and Scotland's aspiration to establish open government, which is accessible to the electorate. It may also represent a diminution of the conditions on access laid out in the 'Code of Practice to Scottish Executive Information'.
- Section 38 Health, safety and the environment - LINK members would have liked to see a Freedom of Information Bill strong enough to incorporate Environmental Information. The proposed exemption of Environmental (and other) Information will create a two-tier system and with it a number of dangers.
- Linked to this issue is Section 61, the Power to make provision relating to environmental information - The reference to the Aarhus Convention is welcomed and LINK bodies urge that this include Article 5 of the Convention. Provisions on the time-scales and in relation to the role of the Commissioner should also be included, to address that any potential gap between the implementation of legislation and the new EIRs.

### **Additional Points**

- Purpose clause - The Act should be prefaced with a statement of aspiration emphasising the benefits of a transparent, accountable system of access to information relating to Scotland's administration. This will be important to the implementation and interpretation of the Act. The point applies equally to other new Scottish legislation where the approaches of New Zealand and other countries make useful comparisons.
- Section 5 Further power to designate Scottish public authorities - LINK bodies would like to see a better definition in place to ensure that the list's contents do not lay it open to misuse and that there are no omissions from this.
- Section 8 Requesting Information - The proposal under Section 8(1) is that only requests received in writing will be deemed relevant to the Act. As a point of principle LINK bodies would not wish to see any weakening of the *de facto status quo*. It is not unreasonable to expect the relevant authorities to be able to establish internal systems which standardise the writing down of telephone or in person requests
- Section 12 Excessive cost of compliance - S12(1) sets a financial cost beyond which level an authority would not be obliged to comply with a request. LINK bodies believe that information provision should not be limited by questions of cost. Instead, they propose that where there are issues of 'excessive cost', the Commissioner should be responsible for deciding where the responsibility for payment lies, thereby safeguarding the principle of availability of access to the information.
- Sections 14, 20(5) 48(1) Vexatious or Frivolous requests - The suggestion that authorities should not have to comply with requests for information which may be 'vexatious' or 'frivolous' should be amended. These two terms should be clarified in detail, to guarantee against possible mis-use of the terms and spirit of the Act. An alternative would be to allow the Commissioner to adjudicate on whether a request is vexatious or frivolous.

- Section 19 Requirement for review of refusal - Section 19(5) should be extended to 40 days in the case of the public. It would not be appropriate to expect members of the public to operate in the same timeframe as those working in the field.
- Section 26 Information intended for future publication - We would recommend an additional clause in this section to ensure that the information requested, will be released as soon as the 12 week period ends, if for any reason the anticipated publication (cited as the reason for exemption) is delayed.
- Section 32 Commercial interests and the economy - The issue of commercial confidentiality should be clarified and delimited, so that the new legislation is geared to taking proper account of the public interest. The Irish Freedom of Information Act may provide a useful basis for comparison.

### **Other issues**

- Charging - The signatories below would be in favour of requests costing less than £100 to process being free, but are concerned that charges above that level are too high and would risk turning the system into one which only the rich can afford.
- Sanctions - The Bill should incorporate penalties which will be applied to bodies which repeatedly make it difficult to access information, or fail to comply with the Act. The Commissioner should be given powers to apply penalties where there is repeated non-compliance. The Commissioner should be required as a minimum to publish information relating to the number of complaints, adjudications, etc, w/he has dealt with and the details of which public bodies were involved and were found to be unreasonably denying access to information.
- This Act will necessitate agreed standards and requirements in relation to record-keeping by public authorities. The production of a statutory code of practice on Records Management applicable to all relevant public authorities operating in relation to Scotland's administration should be included in the draft legislation.
- Resources for implementation - The draft Bill highlights the importance of adequately resourcing public record-keeping across Scotland. There is already a recognised need; there is also a failure in current response times; the new legislation is likely to add significantly to demands for information. Serious investment by the Executive will be needed in systems, training and capacity across Scotland if the aspirations of the legislation are to be achieved.

The signatories below would be pleased to develop any of the above points or to meet with

officials for more detailed discussion if this would be useful and look forward to seeing the Executive's summary of consultation responses, and to comment on proposals for taking these into account in the next phase.

Sincerely

JEN ANDERSON  
Manager

This letter is supported by the following member bodies of Scottish Environment LINK:

*Association for the Protection of Rural Scotland*

*Badenoch & Strathspey Conservation Group*

*British Trust for Conservation Volunteers Scotland*

*Butterfly Conservation (Scotland office)*

*Cairngorms Campaign*

*Friends of the Earth Scotland*

*Marine Conservation Society*

*National Trust for Scotland*

*Ramblers' Association Scotland*

*RSPB Scotland*

*Saltire Society*

*Scottish Countryside Activities Council*

*Scottish Countryside Rangers Association*

*Scottish Wild Land Group*

*Scottish Wildlife Trust*

*Sustrans Scotland*

*WWF Scotland*