



Scottish Information
Commissioner

It's public knowledge

Our Ref: 96226

Mr Bob Doris MSP
Convener
Local Government and
Communities Committee
Scottish Parliament
Edinburgh
EH99 1SP

8 December 2017

Dear Convener

Further submission on the Housing (Amendment) (Scotland) Bill

Thank you for the opportunity to provide evidence to the Committee about the impact of the current Bill on the right to access information from registered social landlords. You invited all witnesses to contact the Committee with any further information they wish to provide.

I suggested that one of two possible amendments might reduce the impact and promised to follow this up in writing to you.

The two suggested amendments are:

1. An express provision in the Bill that RSLs are to be treated as Scottish Public Authorities under the EIRs; or
2. A consequential amendment to regulation 2 of the EIRs adding RSLs to the definition of Scottish Public Authority (whether that be by adding direct reference to RSLs, or by inserting a cross reference to a provision of the Bill).

The key purpose of both the suggested amendments would be to make it clear that the EIRs are to continue to apply to RSLs despite the other amendments made in the Bill designed to reduce regulatory control over RSLs. I noted that the value of robust challenge as part of the governance of RSLs was discussed in evidence before the Committee, and the importance of a right to information in informing such challenge is self-evident.

For completeness, it may be possible for the Scottish Ministers to seek to amend the EIRs by subordinate legislation. However, it is unclear whether there are any delegated powers which would be sufficiently wide to enable amendment of the definition of Scottish Public Authorities in the EIRs. Of course, any decision to use such a power would, in any event, be one for the Scottish Ministers.

I do not underestimate the technical challenge of amending regulations via primary or secondary legislation, but am sure that, having highlighted the unintended second order effect, there is a

legislative drafting solution to prevent it. I respectfully submit that retaining established rights to information is a priority, and that should not be jeopardised by a failure to provide a solution to an identified problem. As I set out more fully in my evidence, I am very concerned about both the impact on members of the public who wish to access environmental information and the public perception of a change to established access to information rights, no matter whether temporary or permanent.

I have no comments in relation to sections 8 and 9 of the Bill.

Please do not hesitate to contact Sarah Hutchison shutchison@itspublicknowledge.info if you would like further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Daren Fitzhenry', with a stylized flourish at the end.

Daren Fitzhenry
Scottish Information Commissioner