

**Introduction to FOI duties**

### The section 5 order



Ministers may designate bodies as Scottish public authorities for the purposes of FOISA where:

- a) The body appears to them to exercise functions of a public nature
- b) The body provides services under contract to another Scottish public authority where the service is a function of that authority.

1. Here's the wording of section 5 of the Freedom of Information (Scotland) Act 2002.
2. The key word is...

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#### 1. Function

2. In other words, s5 bodies are not what we would normally think of as public authorities, but they deliver public functions.
3. The other important point is that...

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1. Bodies designated under s5 are not public authorities for everything else – they are only public authorities for the purposes of FOI law for the function specified.

**“Special school” means -**

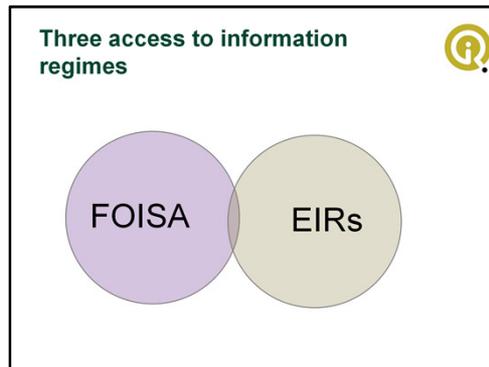


- a) a school, or
  - b) a class or other unit forming part of a public school which is not itself a special school,  
**the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs.**
- S29(1) Education (Additional Support for Learning) Act 2004

1. The section 5 order designation of grant-aided and special schools focuses on a specific function: the function of provision of **education**. The definition for both comes from s29(1) of the Education (Additional Support for Learning) Act 2004. Here’s the definition for “special school” (the definition for grant-aided is similarly focused)
2. It does **not** cover other functions delivered by the special schools, such as residential or other kinds of care. So these functions are not subject to FOI.
3. We **KNOW** this is a challenge and you’re concerned about how you’ll manage it.

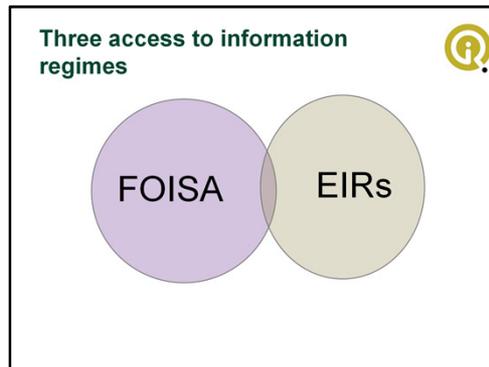


1. Let's be upfront:
2. We know FOI law, but you are the education experts.
3. It may not feel like it, but you have more of the answers than we do about how to manage the issue of what is covered by the s5 order and what you can do about everything else.
4. So we can share, but the ultimate solution is with you.
5. A helpful starting point is to think about the new rights the public will have and to then work backwards. That's why we've given you a copy of Your Right to Know – it's a useful signpost for you to FOI rights so you can think about what it means for you.

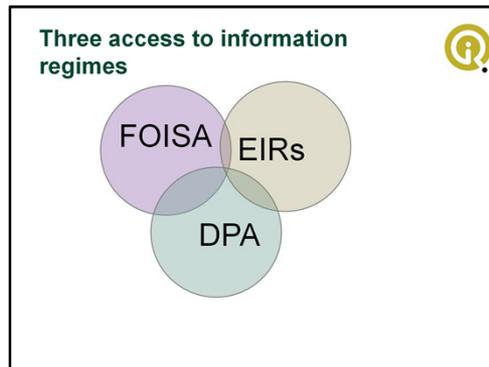


1. The first two are:
2. the Freedom of Information (Scotland) Act 2002 which provides a right to request any information held by a Scottish public authority. FOISA is an Act of the Scottish Parliament.
3. The Environmental Information (Scotland) Regulations 2004 which provide a right to request any environmental information held by a Scottish public authority. The EIRs emanate from a European Directive, incorporated as secondary legislation, which explains why they are separate from FOISA.
4. If you're subject to FOISA, you are also subject to the EIRs.

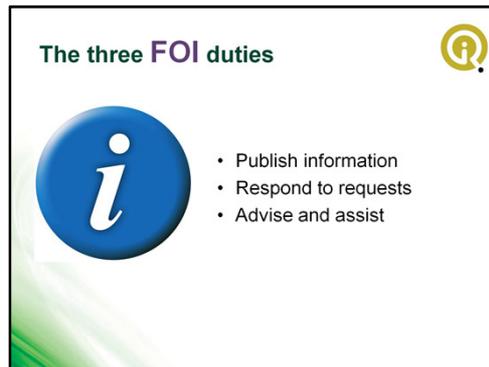




1. Back to this slide again.
2. There is very little cross over between FOISA and the EIRs. Either information is environmental (in which case access is provided by the EIRs, or it's not, in which case access is via FOISA).
3. Collectively we describe these as "FOI law"
4. FOISA and the EIRs are very similar, but there are some important differences, which we'll be pointing out today as we go through.
5. It's essential you follow the right legislation when you respond to an information request.
6. The slide says there are three access to information regimes – which is the third one?



1. Yes, the Data Protection Act 1998.
2. This gives us a right to access our own personal data. Your school will already be subject to the DPA and will be responding to subject access requests.
3. FOI law (FOISA and the EIRs) give us a right to ask for other third party personal data. Our right to our own data is under the DPA, but we can ask for other people's personal data under FOI law.
4. Most personal data is exempt under FOI law, but there are circumstances where we can access it. Rosemary will be covering these circumstances in more detail later.



1. The three new duties you're going to have under FOI law are....
2. Most people, when they think of FOI, think of the duty to respond to information requests.
3. That's understandable, because that's what we hear most about.
4. At the Commissioner's office we encourage authorities, like yourselves, to think of publication first. Most people want to access information immediately, not have to wait for it. The best way to meet their needs is to make as much information available so they can get it for themselves. While publishing can feel like extra work, we argue it's a worthwhile investment of your time – spend a little now to save a lot later.
5. That's why we're going to look at publication first.