



1. Welcome!
2. Housekeeping arrangements
3. Introductions: Sarah, Rosemary

Getting to know you



- Your name
- Your organisation
- One thing you'd like to get from today

1. In your group, please introduce yourself to others



1. Our programme aims to give you at least an introduction to everything you need to know and need to do to get ready for FOI law from 1 September this year.
2. We've structured the presentations around the things we think you need and specifically to answer your questions about:
 - i. Publishing information proactively
 - ii. Managing FOI duties when they apply to only part of an organisation
 - iii. Responding to FOI requests for information about individual students
 - iv. Sources of support and additional guidance
3. We're joined by colleagues from City of Edinburgh Council who have volunteered to share their substantial experience of FOI with you.

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...

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. 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...

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. 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.

“Secure accommodation service” 

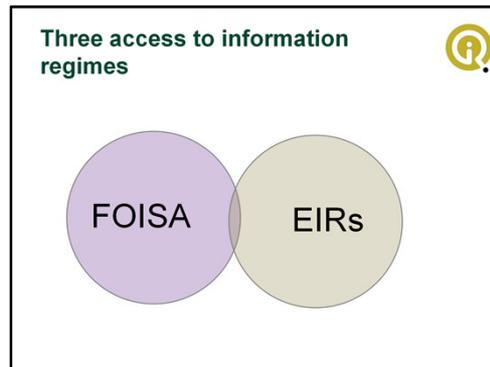
- A service which-
- a) provides accommodation for the purpose of restricting the liberty of children in residential premises where care services are provided; and
- b) is approved by the Scottish Ministers for that purpose.

Public Services Reform (Scotland) Act 2010, Sch 12, para 6

1. The section 5 order designation of secure accommodation services focuses on a specific function: the function of provision of **secure accommodation**. The definition for both comes from s29(1) of the Education (Additional Support for Learning) Act 2004. Here’s the definition for “secure accommodation services”
2. It does **not** cover other functions delivered by the secure accommodation services,
3. What other functions do you have?



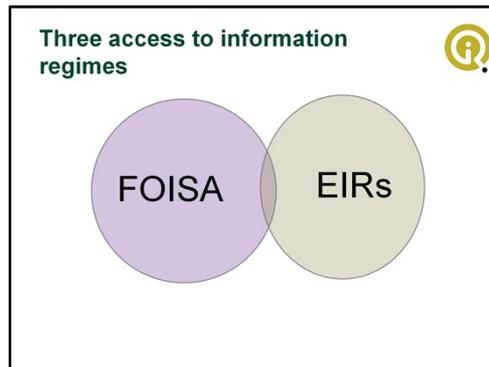
1. Let's be upfront:
2. We know FOI law, but you are the secure accommodation services experts.
3. It may not feel like it, but you have more of the answers than we do about how to manage the issue of what is covered by the s5 order and what you can do about everything else.
4. So we can share, but the 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.



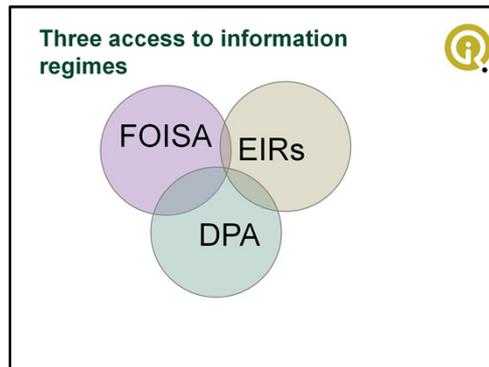
1. The first two are:
2. the Freedom of Information (Scotland) Act 2002 which provides a right to request any information held by a Scottish public authority. FOISA is an Act of the Scottish Parliament.
3. The Environmental Information (Scotland) Regulations 2004 which provide a right to request any 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.



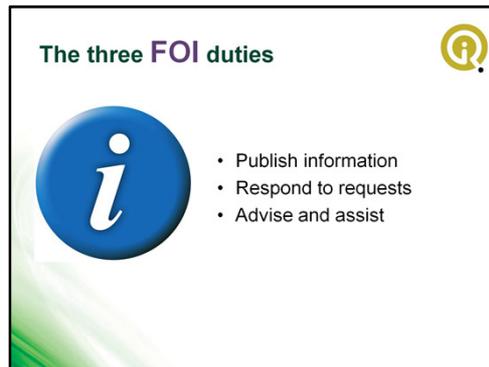
1. Remember I said that the EIRs give a right to access environmental information? The definition of environmental information is very wide.
2. It covers:
 3. The state of elements of the environment
 4. Factors likely to affect those elements
 5. Relevant legislation, plans and policies
 6. Economic analyses and assumptions behind policies
 7. Human health, cultural sites and built structures
8. You're likely to find your units have some environmental information, but we expect most requests will be for non-environmental information



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 organisation 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.