



# **Extend Information Coverage to all Public Services**

**UNISONScotland's response to the Scottish Government Discussion Paper on extending the coverage of the Freedom of Information (Scotland) Act 2002**

**January 2009**

## **Executive Summary**

- The intention throughout the discussion, implementation and operation of FOI legislation is that the public should be able to access information about the public services that they use, and public and political decisions that affect them. This information should be available under the Act, whatever type of body holds the information or provides the service. Where this occurs the body concerned should be covered by the FOI(S)A.

- That is the principle on which the legislation is based and it should be used to extend coverage to other groups and bodies who also provide such services. It also follows that such bodies would only be covered as far as their provision of that service was concerned, and the Act would not apply to other functions of the body.

- UNISON would also welcome the designation of 'classes' of bodies rather than individual bodies.

- We are concerned about the short length of time for responses to this consultation paper

- The question of funding of the service should not be a defining criterion. It has become less relevant as private funding is increasingly used for public functions

- While there will be legal debate on a number of points, the decision to extend the coverage of the FOI(S) Act is a political decision. The provision is there in the legislation, there are anomalies and unfairness created by the current position, and the Scottish public expects those to be rectified. We urge the Scottish Government to begin to do so.

- We consider the question suggesting a balance between 'openness' and 'potentially negative impacts' on the bodies designated, runs the risk of establishing a two-tier approach to coverage between public and non-public service providers. We do not accept that it is ok for the non-public sector to provide the same services without the same openness and accountability.

- Further restrictive factors listed also give us cause for concern. There is no advantage in introducing further more restrictive definitions such as 'significant work of a public nature' – all public services must be covered. Anything less will only serve to confirm the two-tier level of accountability with the non-public sector continuing to hide information from the public.

- UNISON does not think that people's right to ask for information on their services should be defined and restricted by the length and value of the contract.

- Regulators should not be a substitute for FOI coverage. They have different functions; have little or no remit (or expertise) in judging the provision of information. This would also mean increasing complexity and potential conflicts and the unavailability of appeal rights to the Commissioner.

- UNISON suggests that the resource implications on non-public service providers should be dealt with similarly to that given to public service providers!

- We do not think that businesses, charities or others are too small to be faced with this responsibility.

- 1) Currently the Act covers individual dentist or GP practices. How many of these organisations are smaller than these?
- 2) It is likely that the demands on a small organisation will be much less frequent or difficult than on a large one.

3) It would not be fair or 'proportionate' for a number of small organisations to determine the level of access to information across a whole sector.

- With reference to the options listed, UNISON does not consider that the status quo is an option.

- The problem of self-regulation – ie. non-enforceability - is outlined in the discussion document, and the existence of a separate regulator has the same drawbacks.

- The improvement of statutory guidance would, of course, be welcome, but it is not a substitute for designation.

- As might be expected UNISON is strongly in favour of improving access by utilising the law and by making section 5 orders. These should be based on the principles of openness and accountability in the provision of our public services.

- While an incremental approach may be acceptable, it needs to become a much swifter process (this is the first time the use of Section 5 has been considered since the introduction of the Act in 2002). It also needs to cover a wider range of public services and their providers.

- All public services contracted out to private or community and voluntary sector providers should be subject to FOI in relation to their provision of that public service.

- We oppose any concept that services such as cleaning, catering, laundry, building maintenance etc, whether in hospitals, schools, or other public services, are not part of the core functions of the public body.

- The purpose of this Discussion Paper is to designate bodies that are NOT public bodies for the purposes of the Act. The inclusion of RSLs in this debate indicates that they are NOT public bodies.

- UNISON argues that any body - Trust, Limited Liability Partnership or other Joint Partnership, set up by one or more public authority to deliver public services should be covered by the Freedom of Information (Scotland) Act.

## **Introduction**

UNISON Scotland welcomes the opportunity to respond to the Scottish Government's Discussion Paper on extending the coverage of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). UNISON is Scotland's largest public sector trade union representing more than 160,000 members delivering public services.

We welcome this Discussion Paper on whether the Scottish Government should make a Section 5 order to extend the Act to cover: contractors who provide services which are a function of a public authority; registered social landlords; and local authority trusts or bodies set up by local authorities.

We do have reservations about the short (2 month) consultation period – especially as that period covers the Christmas and New Year Holiday period.

**Our approach in this response is to start from the principles around access to information. We then go on to consider specific points raised in the Discussion Paper.**

**We are happy for this response to be made public and would be willing to speak to it at any forums if required.**

### **1. Purpose of the Discussion Paper**

#### **a) The Principles of Freedom of Information**

The original consultation document that led to the FOI(S)A, set out the key principles of transparency and openness in the delivery of Scotland's public services that the legislation was intended to lead to. It made clear that

‘...legislation will apply also to information relating to the services performed by contractors working for Scottish public authorities.’\*

The Act itself provided for coverage to be extended to bodies carrying out ‘functions of a public nature’ and contractors providing a service under contract to a public body. This is now the subject of this discussion paper.

The ‘6 principles’ adopted by the current Scottish Government also make it clear that the intention is to approach FOI

‘...as an essential part of open democratic government and responsive public services.’

**It is therefore clear that the intention throughout the discussion, implementation and operation of FOI legislation is that the public should be able to access information about the public services that they use, and public and political decisions that affect them. This information should be available under the Act, whatever type of body holds the information or provides the service. Where this occurs the body concerned should be covered by the FOI(S)A.**

*\*An Open Scotland, Scottish Executive consultation paper 1999.*

#### **b) The public interest**

Public services are now being delivered in a wide variety of different ways, many of whom involve organisations not defined as public bodies – trusts, partnerships with other public bodies or with non-public bodies, use of the community and voluntary sector and private firms to deliver services.

**Unless there is a clear understanding that these bodies should be covered in as far as they are providing public services, the risk is that the public interest in being able to access relevant information about services that affect their lives, that they use and, in many cases fund is being diluted.**

This is not so much an argument about 'losing' rights of access – the issue about Housing Stock Transfer removing public sector housing from coverage was raised during the debate on the introduction of the Act – but about the Government having the political will to ensure that their own principles and the principles that underpinned the legislation are defended and strengthened.

It is also clear from surveys\* and other assessments of public opinion, that the public are behind the extension of coverage of FOI – seeing the clear anomaly where similar public service provided in different areas and/or by different methods of delivery is or is not covered by the Act. The most obvious example is social housing where Housing Associations are not (yet) covered by FOI, but ARE covered by the Scottish Public Services Ombudsman, while local councils are covered by both.

\**Public Awareness Research Report 2008*, Office of the Scottish Information Commissioner  
<http://www.itspublicknowledge.com>

## **2. Coverage of the Act and powers to extend coverage**

Coverage already does extend to a variety of public authorities, and these are constituted and funded in a variety of ways. Whatever size they are – from large local councils like Glasgow City to individual GP and dental practices – and wherever their funding is sourced – some universities receive less than half their funding from the public purse – they all provide public services. **That is the principle on which the legislation is based and it should be used to extend coverage to other groups and bodies who also provide such services.**

If one adopts this principle it also follows that such bodies would only be covered as far as their provision of that service was concerned, and the Act would not apply to other functions of the body.

UNISON would also welcome the designation of 'classes' of bodies rather than individual bodies. This would a) help to identify the particular public services intended to be covered, and b) ensure that new bodies or contracts coming into being after the extension would be picked up and covered under the legislation. (For example if all Registered Social Landlords were covered, rather than simply large or Stock Transfer Housing Associations (such as the GHA) then secondary transfers of housing stock (as is proposed by the GHA) would not mean tenants yet again running the risk of losing their rights to information from their landlords under the Act.)

Updating Schedule 1 (the list of Scottish Public Authorities) to ensure all current public bodies are listed seems to be causing some delays. There has been only one order updating the original Schedule 1 list, but other authorities have been added by virtue of clauses in their own founding legislation. It would be useful to ensure that regular updated lists are published to ensure accurate monitoring.

## **3. Functions of a public nature and a service whose provision is a function of a Scottish public authority**

It is true to say there is no accepted legal definition of what constitutes a function of a public nature. However there are a number of definitions of a public authority;

- in EC legislation – the concept of an 'emanation of the state'.
- Or in the UK Human Rights Act 1998 - *"any person certain of whose functions are functions of a public nature"*.
- Plus the Environmental Information Regulations include coverage of non-public bodies – *"...any other person who is neither a public body nor the holder of a public office and who is under the control of a person or body which is either*

*covered by FOISA or which is a Scottish public authority with mixed or no reserved functions and:*

- (i) has public responsibilities relating to the environment;*
- (ii) exercises functions of a public nature relating to the environment; or*
- (iii) provides public services relating to the environment.*

Attempts to find factors to assist in legal definitions are not particularly helpful either. The question of funding has become less relevant as private funding is increasingly sought for public functions – much higher and further education now receives more private than public funding – but they are covered by FOI and no-one would argue that they were not public services.

Whether the service is directly prescribed by statute is also not useful. For example local councils now have a ‘*Power to Advance Well-being*’ in their statutory functions, so it could be argued that any activity they undertake is underpinned by statute.

Ultimately these definitions do not serve our interests well. It is clear from The OSIC survey\*, that the public consider that the functions it asked about (prisons and prison transport, privately built and run schools and hospitals, trusts running local council health and leisure services and housing associations) should be covered by FOI.

Legal arguments need to be addressed, but from a context of a clear decision to proceed to extend coverage of the Act to all providing public services.

**Ultimately the decision to extend the coverage of the FOI(S) Act is a political decision. The provision is there in the legislation, there are anomalies and unfairness created by the current position, and the Scottish public expects those to be rectified. We urge the Scottish Government to begin to do so.**

\**Public Awareness Research Report 2008*, Office of the Scottish Information Commissioner  
<http://www.itspublicknowledge.com>

#### **4. Appropriateness of extending coverage**

Our response to 3 above, indicates that we consider it to be clear that the three groups mentioned should be brought within scope of the FOI(S)A. We consider the question suggesting a balance between ‘openness’ and ‘potentially negative impacts’ on the bodies to be a curious one. The aims of the legislation are to increase openness and accountability. The public sector was instructed that it had to deliver, and by and large it did. **Are we now suggesting that it is ok for the non-public sector to provide these same services without the same openness and accountability?**

The further list of restrictive factors in this section also gives us cause for concern. **There is no advantage in introducing further more restrictive definitions such as ‘significant work of a public nature’ – all public services must be covered. Anything less will only serve to confirm the two-tier level of accountability with the non-public sector continuing to hide information from the public.**

The issue of public funding has already been dealt with above (sec 3). If this factor is adopted we may find ourselves in the invidious position of taking bodies OUT of coverage!

**UNISON does not think that people’s right to ask for information on their services should be defined and restricted by the length and value of the contract.**

**The issue of whether a body is covered by a regulator is largely irrelevant in terms of the disclosure of information. Regulators are often created to ensure the ‘market’ is delivering the lowest costs – and in any case will have little or no remit (or expertise)**

**in judging the provision of information. This could also mean an extremely complex series of bodies with a role in FOI, with an accompanying lack of clarity to the public, and the risk of conflicting decisions being made by different bodies. Unless bodies are covered under the Act, the enforcement of FOI through the Scottish Information Commissioner would be unavailable to applicants, and severely disadvantage rights to information.**

It has also become clear that contractors have often been obstructive where the public body who contracts them wishes to release information – eg.. in the case of the Edinburgh Royal Infirmary PFI contract, where Consort consistently refused to allow Lothian Health Board to release the contract. The process of obtaining this information would have been so much more direct had the contractor itself been covered by the Act, and we feel that experience indicates this would continue to be a barrier, if the only way to get the information is via the contracting public authority.

It is ironic that this discussion document now considers the resource implications of the legislation. When UNISON raised the implications of this for the public sector in the consultation on the original Bill, we were informed that this was not an issue, and that accessibility and openness were a function they had to provide from existing resources. **UNISON suggests that this approach is equally valid in application to the openness and accountability of all public service providers!**

**We fully expect that there will be some case made that some businesses, charities or others are too small to be faced with this bureaucracy. We would answer this in three ways**

- 1) Currently the FOI(S)A covers organisations as small as individual dentists or GP practices. How many of these organisations are smaller than these?**
- 2) It is likely that the demands on a small organisation will be much less frequent or difficult than on a large one.**
- 3) It would hardly be fair or ‘proportionate’ for a number of small organisations to determine the level of access to information across a whole sector.**

### **Options**

**With reference to the options listed, UNISON does not consider that the status quo is an option.** Our position has always been that there should not be a two-tier level of access to public service information, and our experience is that the current set up has led to difficulties in obtaining information on public services from private contractors, and other non-public bodies.

**The problem of self-regulation (non-enforceability) is outlined in the discussion document, and the existence of a separate regulator has the same drawbacks here as listed above.**

**The improvement of statutory guidance would, of course, be welcome, but it is not a substitute for designation.** UNISON does however welcome the suggestion that the Section 60 Code of Practice could encourage public authorities to include contract clauses giving them the right to information to respond to FOI request, and to encourage the use of publicly owned companies rather than those involving the private sector.

**As might be expected UNISON is strongly in favour of improving access by utilising the law and to make section 5 orders. These should be based on the principles of openness and accountability in the provision of our public services.**

**While an incremental approach may be acceptable, it needs to become a much swifter process (this is the first time the use of Section 5 has been considered since the introduction of the Act in 2002). It also needs to cover a wider range of public services and their providers. For example; care homes and domestic care provision; private**

schools and nurseries, hospitals and clinics – especially if used to provide public care (eg. to tackle waiting times); Limited Liability Partnerships entered into by public authorities; Other partnerships set up jointly by two or more public authorities, with or without non-public partners eg. Community Health and Care Partnerships, etc.

## **5. Extension of coverage to contractors**

Where the NHS contracts out services to private hospitals and other healthcare providers, eg. to bring down waiting lists, these contractors should also be subject to FOI in relation to their provision of that public service.

Many community and voluntary organisations and private companies currently supply care services – both residential and in the community – to local councils and health boards. It is important that these contractors should also be covered by FOI in relation to their provision of that service.

### **a) PPP/PFI contractors**

UNISON Scotland is particularly concerned at the Scottish Government's preliminary views on bringing PFI/PPP contractors under the scope of the Act.

In paragraph 24, the discussion paper introduces a wholly new definition into the debate about PFI/PPP contractors. The concept of 'core functions' is not one covered by the Act, and the implication that 'other' services in the contract are not very important is totally rejected. (The term 'front line services' is also used in the paper at various places, with a similar implication.)

**We do not think that it is correct factually, nor morally, to state that services such as cleaning, catering, laundry, building maintenance etc, whether in hospitals, schools, or other public services, are not part of the core functions of the public body.**

It seems incredible to us that we have to make this point, but, is the Scottish Government seriously suggesting that the cleaning of an operating theatre or a hospital ward is NOT core to the clinical function of that hospital? Is the provision of healthy and nutritious school meals NOT core to the education of our children? These can indeed be a life or death matter, as has been proven in cases involving Hospital Acquired Infections, and recognised as such by the Secretary for Health. The same argument also applies to the maintenance, the heating, the lighting and safety of our care homes, hospitals, schools and other public service facilities.

**If a contractor is providing a facility for the delivery of our public services, then that contractor should be subject to FOI legislation in regard to all these services.**

### **b) Privately Managed Prisons**

We support including privately managed prisons. We note that in paragraph 31, the discussion paper introduces another red herring in the argument about the fact 'Scottish Ministers have no 'contractual relationship' with sub-contractors. This clause appears nowhere in the FOI(S)A, and looks like an attempt to introduce a quasi-legal confusion into the debate.

The Act clearly states that Ministers can designate any person who 'appear[s] to the Scottish Ministers to exercise functions of a public nature'. Sub-contractors are clearly doing this and can therefore be designated. We believe the extension of the Act should cover subcontractors too.

Even if our interpretation is wrong, this is a political decision and, if need be, the Act should be amended to ensure this is implemented.

### **c) Significant work of a public nature**

We have already made our position clear on the unhelpful introduction of the concept of 'significant' work. Its coupling in paras. 34 and 35 with the erroneous concept of 'core functions' looks like simply another attempt to water down the importance of the public services that some contractors carry out.

### **d) Public funding and contract value and duration**

We support the idea of not setting minimum duration or value on the contracts, and agree that the public may well have legitimate interest in receiving information held by the relevant body, whatever the value or length of the contract.

### **c) Transparency and accountability**

We have already commented on the flaws in the argument on relying on regulators set up for other purposes (Sect 4). The fact that a variety of appeals to the SIC have been needed to extract information in the examples quoted seems to us to provide more arguments in support of these bodies being directly covered.

**Q1: In principle, do you support extending the coverage of the Act to contractors? Please explain your reasoning e.g. do you consider that you are at present unable to access certain information from contractors as they are not covered by the Act?**

Yes. The principle applies, as discussed above, whether or not there have been specific difficulties to date. However, we have had problems accessing information about PFI/PPP contracts, where we have been told by public authorities that they would release the information but the contractor does not want them to and/or has threatened legal action.

**Q2: If supportive of an extension of the coverage of the Act to contractors, what particular activities would you like to see covered? In particular, do you consider that contractors who operate privately managed prisons or providers of prison escort services should be covered?**

Again, the principle should be that they are covered if they are providing functions of a public nature. This should include PFI/PPP contractors, but also other providers delivering services under contract to the authority, including private and voluntary care services, private hospitals and healthcare bodies (when being used to deliver NHS services) and others

Certainly contractors who operate privately managed prisons or providers of prison escort services should be covered.

**Q3: Do you agree that the factors summarised in paragraph 33 are relevant in assessing the appropriateness of extending coverage to contractors? Do you think any additional or alternative factors are relevant? Please explain your reasoning.**

No, the factors listed seem to us to be unnecessarily restrictive and introduce new concepts that go against the aim and spirit of the Act – in particular the introduction of 'significant' public work, the criteria of how much public funding is provided, and the value and length of any contract. We believe that contractors should be covered wherever they undertake work of a public nature. That is not necessarily dependent upon receiving significant public funding, nor the value or length of the contract. (For example, hospital cleaning is a vital public service, but a contract may be short or of relatively low value.)

All public services should be covered by the Act, however and by whoever they are delivered. It should be part of the normal expectations for contractors that if they bid for such work, there are responsibilities that come with it.

**Q4: Of the 4 proposed options given in Part 4 (no action/self-regulation/improved statutory guidance/one or a series of section 5 orders), which do you consider the best option? Or would some other option or combination of options be preferable? If**

**supportive of an extension of coverage please also state whether you would support an incremental approach to extension as opposed to a 'big bang'.**

A 'class' S5 order for all contractors who contract with public authorities to run their services should cover current and potential future organisations. Individual sub-contractors may need to be specifically designated, in specific cases. Coverage should apply to existing and future bodies in the groups proposed where possible. If a gradual approach is adopted (eg. larger bodies first), a clear and swift timetable should be agreed, otherwise it could take years for some organisations to be covered.

## **6. Extension of coverage to Registered Social Landlords**

The inclusion of RSLs was the topic of much discussion during the consultation on the Act. Indeed the Scottish Parliament's Justice 1 Committee amended the bill to include them, and this clause was subsequently deleted by the then Scottish Executive.

The arguments that these bodies provide public services have become clearer since the Act, with the creation of more Housing Associations to receive ex-council housing stock, and the planned secondary transfer of stock from the GHA to other city housing associations.

### **a) existing regulatory control**

The differing numbers of public regulatory bodies that RSLs are subject to, both outline the confusion that could occur, were one of them to accept complaints on FOI instead of the Office of the SIC, and give a further back up to the argument that RSLs provide a public service, and should therefore be covered by the FOI(S)A.

### **b) creeping classification as public bodies**

While there seems to UNISON to be no reason for concern about being a public body, it seems to us that this fear is unfounded. Many public services are provided by non-public bodies. Indeed, the very fact that the current debate is taking place indicates that this is the case. **The purpose of Section 5 of the FOI(S)A is to designate bodies that are NOT public bodies as such for the purposes of the Act, and the inclusion of RSLs in this debate indicates that they are NOT public bodies.**

The issue here, is whether they provide public services – and they unquestionably do.

### **c) application to small organisations**

**The argument that some housing associations are so small that being covered by FOI would be too onerous, has always seemed to us to be flawed.** In the first instance the idea that people should be denied a right to information because an organisation is small, is not one that could be morally justified. Secondly, the provision of assistance such as model publication schemes, expert advice etc. from the Government, Scottish Information Commissioner and bodies like the Scottish Public Information Forum can assist bodies of all sizes.

Finally it is most unlikely that even the smallest housing association is as small as the smallest GP or dental practice! These have been covered since the Act was introduced and there have been little or no problems attributed to the size of the organisations!

**Q5: In principle, do you support extending the coverage of the Act to RSLs? Please explain your reasoning e.g. do you consider that you are at present unable to access certain information from RSLs as they are not covered by the Act?**

Yes. It is clear and is acknowledged by Housing Associations that they are not covered by the Act, and therefore we (and presumably others) have not been able to use the Act to access information.

In addition – even when an RSL claims to follow the principles of the Act (such as the GHA), some factors have not been adopted – for example the 'harm' test of substantial prejudice,

or the public interest test. Of course it is also not possible to appeal any decision of theirs to refuse information to the Commissioner.

**Q6: If supportive of an extension of the coverage of the Act to RSLs, on what basis would you wish to see coverage extended (ie. to all RSLs/to all over a certain size/on the basis of provision of specified functions only/GHA only etc)**

To all RSLs would be the only way to avoid a two-tier system of information access.

**Q7: Do you agree that the factors summarised in paragraph 62 are relevant in assessing the appropriateness of extending coverage to RSLs? Do you think any additional or alternative factors are relevant? Please explain your reasoning.**

No, the factors listed seem to us to be unnecessarily restrictive and introduce new concepts that go against the aim and spirit of the Act – in particular the introduction of ‘significant’ public work and the criteria of how much public funding is provided. We believe that all RSLs should be covered as they undertake work of a public nature. That is not necessarily dependent upon receiving significant public funding.

All public services should be covered by the Act, however and by whoever they are delivered. It should be part of the normal expectations for organisations such as housing associations that if they provide such public services, there are responsibilities that come with this.

**Q8: Of the 4 proposed options given in Part 4 (no action/self-regulation/improved statutory guidance/one or a series of section 5 orders), which do you consider the best option? Or would some other option or combination of options be preferable? If supportive of an extension of coverage please also state whether you would support an incremental approach to extension as opposed to a ‘big bang’.**

A ‘class’ S5 order for all RSLs should cover current and potential future organisations. Coverage should apply to existing and future bodies in the groups proposed wherever possible. If a gradual approach is adopted (eg. larger bodies first), a clear and swift timetable should be agreed, otherwise it could take years for some organisations to be covered.

## **7. Extension of coverage to local authority trusts or bodies set up by local authorities**

**UNISON argues that any body, be it Trust, Limited Liability Partnership or other Joint Partnership, set up by one or more public authority to deliver public services should be covered by the Freedom of Information (Scotland) Act.**

Public authorities now use a variety of vehicles to deliver services. In order that information on all public services in whatever area should be equally available to the people who use those services, these should all be covered by the Act.

As stated in the discussion paper, if the service delivery vehicle is a wholly-owned trust or company, then it is covered under Section 6, and UNISON would advocate this as the least-worst option. However, the introduction of Limited Liability Partnerships with private sector involvement, the establishment of Partnerships jointly by two or more public authorities, that may also involve community and voluntary organisations (Community Health and Care Partnerships or Community Safety Partnerships for example), and the involvement of non-public bodies in many Leisure and other Trusts, mean that these groups must be listed to avoid doubt.

Indeed current charity law tends to demand that charitable trusts should NOT be under the political control of public bodies.

It is not either a question of simply looking at organisations established after the Act's implementation, or of the public 'losing' rights. The coverage must be extended to cover existing trusts delivering public services, whenever they were created.

**Q9: In principle, do you support extending the coverage of the Act to trusts and bodies set up by local authorities? Please explain your reasoning e.g. do you consider that you are at present unable to access certain information from local authority trusts and bodies as they are not covered by the Act?**

Yes. There have been clear examples of refusals by Trusts to release information because they are not covered by the FOI(S)A. In particular North Ayrshire Leisure Trust. However, even when the organisations follow the Act in principle, unless they are covered there is no right of appeal to the Commissioner

**Q10: Are there any specific local authority trusts or bodies which you would like to see coverage extended to and which meet the criteria for coverage as set out in Part 4?**

There are a large number of Sport and Leisure trusts established by local councils to run public sports and leisure facilities, in addition some also run cultural, library and museum services (eg. in Shetland). In addition we think that Joint Partnerships established by two or more public authorities (eg. Local councils, health boards, police authorities) and sometimes involving the community and voluntary sector, should be listed if they are not already covered.

Organisations involving the private sector in partnerships – such as the Limited Liability Partnerships set up to run Glasgow City's Building Service, Parking Service, Information Technology and Property Services and that proposed for Direct and Care Services, should be designated if they are not already covered.

**Q11: Do you agree that the factors summarised in paragraph 88 are relevant in assessing the appropriateness of extending coverage to local authority trusts and bodies? Do you think any additional or alternative factors are relevant? Please explain your reasoning.**

No, the factors listed seem to us to be unnecessarily restrictive and introduce new concepts that go against the aim and spirit of the Act – in particular the introduction of 'significant' public work, the criteria of how much public funding is provided, and the value and length of any contract. We believe that bodies should be covered wherever they undertake work of a public nature. That is not necessarily dependent upon receiving significant public funding, nor the value or length of the contract.

All public services should be covered by the act, however and by whoever they are delivered. It should be part of the normal expectations for partners and trusts that if they are created to deliver this work, they continue to retain ALL the public responsibilities that come with it.

**Q12: Of the 4 proposed options given in Part 4 (no action/self-regulation/improved statutory guidance/one or a series of section 5 orders), which do you consider the best option? Or would some other option or combination of options be preferable? If supportive of an extension of coverage please also state whether you would support an incremental approach to extension as opposed to a 'big bang'.**

A 'class' S5 order for all Trusts, Partnerships and LLPs established by public authorities to run their services should cover current and potential future organisations. Coverage should apply to existing and future bodies in the groups proposed. If a gradual approach is adopted (eg. larger bodies first), a clear and swift timetable should be agreed, otherwise it could take years for some organisations to be covered.

## **Conclusion**

This is an extremely important debate. The principles of Freedom of Information and people's access to information on their public services have been introduced by the 2002

Act, implemented by our public sector and strengthened by the advice and enforcement from the Office of the Scottish Information Commissioner.

It is now time to take the next step. The then Minister for Justice, when he spoke on the legislation at stage 3 of its introduction, gave a commitment that the government would use Section 5 of the legislation to bring into coverage of the Act, appropriate organisations not covered by the existing definitions of public bodies.

“Many bodies outside the public sector deliver important public services. There should be no doubt about ministers' commitment to using the powers in the bill to catch those bodies.” *Jim Wallace MSP, Minister for Justice*. Freedom of Information (Scotland) Bill: Stage 3 debate, Scottish Parliament Wednesday 24 April 2002

<http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-02/sor0424-02.htm>

This Discussion Paper lists some of the organisations that should be covered. UNISON thinks they and others should be covered, and urges the Scottish Government to pursue their designation.

**For further information please contact:**

**Matt Smith, Scottish Secretary**  
UNISON Scotland  
UNISON House  
14, West Campbell Street,  
Glasgow G2 6RX