FREEDOM OF INFORMATION (AMENDMENT) (SCOTLAND) BILL

CONSULTATION REPORT

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Introduction

1. The Freedom of Information (Scotland) Act 2002 (‘the Act’) enables the public to access information held by Scottish public authorities. Generally speaking, the information requested must be provided unless it falls under one or more of the exemptions set out in the Act.

2. The legislation is widely recognised as playing a significant part in making Scotland a more open, transparent and accountable society and as having been successfully implemented since coming into force in 2005.

3. The Scottish Government, as set out in its Six Principles of Freedom of Information, is committed to Freedom of Information as an essential part of open democratic government and responsive public services.

4. The second principle states that the Government operates within the Freedom of Information (Scotland) Act rather than proposes significant change to it, but adjusts the regime where it is necessary and sensible to do so.

5. In line with this principle, the decision to bring forward an Amendment Bill was made following the identification of weaknesses in two areas of the legislation which could only be remedied by amendment to the Act.

6. Consequently, at the 2011 Holyrood Freedom of Information conference, the Minister for Parliamentary Business and Chief Whip announced the start of consultation on the Freedom of Information (Amendment) (Scotland) Bill.
Freedom of Information (Amendment) (Scotland) Bill – summary of proposals at consultation stage

1. The two weaknesses giving rise to the need for primary legislation relate to the inflexibility of the order-making powers at section 59(1) of the Act and the practical ineffectiveness of the offence provision at section 65.

2. Section 59(1) of the Act provides order-making power to amend the period of time at which a record becomes a ‘historical record’. The current time period at which a record becomes ‘historical’ is 30 years. Section 58(1) of the Act identifies those exemptions which cannot be applied to an ‘historical record’.

3. The Scottish Government’s Improving Openness consultation¹ in 2009 invited comments in terms of whether the lifespan of the ‘30-year’ exemptions at section 58(1) of the Act should be reduced.

4. The relevant exemptions are:

- Section 28 Relations within the UK
- Section 29 Formulation of Scottish Administration policy
- Section 30 Prejudice to the effective conduct of public affairs
- Section 33(1) Commercial interests and the economy
- Section 36 Confidentiality
- Section 37 Court records
- Section 40 Audit functions
- Section 41(a) Communications with Her Majesty, other members of the Royal Family, or with the Royal Household.

5. While responses² generally supported a reduced time period, concerns were expressed in respect of certain of the exemptions, particularly with regards to reducing the lifespan of section 36 (confidentiality).

6. However, the present scope of the order-making powers is such that an order cannot be selective about which of the exemptions it would apply to. Consequently, at present, an order made under section 59(1) redefining the time period at which a record is considered to be ‘historical’ would affect all the exemptions at section 58(1).

7. The Scottish Government is sympathetic to the views of those expressing concern about a uniform reduction in the lifespan of the ‘30-year’ exemptions. The Amendment Bill, as subject to consultation, therefore proposed to improve the section 59(1) order-making powers by providing for greater flexibility in determining the lifespans of the exemptions at section 58(1) of the Act. The proposed amendment made provision for exemptions to be considered individually, as well as for records of different descriptions. The revised order–making power would also allow for greater flexibility in determining the lifespan of those exemptions at section 58(2), currently 60 and 100 years.

¹ http://www.scotland.gov.uk/Publications/2009/07/01094653/0
² http://www.scotland.gov.uk/Publications/2009/11/26114548/0
8. Section 65 of the Act sets out that a person who, with the intention of preventing disclosure of information subject to a request, alters, defaces, blocks, erases, destroys or conceals the information is guilty of an offence. An offence under section 65(1) must be prosecuted within six months of the commission of the offence – as set out at section 136(1) of the Criminal Procedure (Scotland) Act 1995 – due to it being summary-only.

9. However, in practice, due to the process that the Act follows, it is potentially ten months from the commission of the offence before an application is made to the Scottish Information Commissioner and an investigation commenced into the handling of the request. In such circumstances, even if evidence is found of an offence, a prosecution could not go ahead.

10. However, while the six months is the default time period for prosecuting a summary-only offence, the Criminal Procedure (Scotland) Act does contain provision for specifying an alternative time period. The draft Bill, as subject to consultation, proposed to increase the relevant time period to 12 months thereby making this section effective.

11. In addition, the draft Bill proposed to adopt the same position as taken by the United Kingdom Government in terms of information relating to communications with Her Majesty and the Heir and second in line to the Throne, in the interests of a common approach to the treatment of such information across the United Kingdom.

12. The Bill, as subject to consultation, amended section 2(2) of the Act making certain elements of the exemption at section 41(a) ‘absolute’ i.e. it would no longer be required to consider the public interest when determining whether or not to withhold relevant information.

**Section 59 Order**

13. The consultation paper noted that, in the event of enactment, a draft order would be brought forward, in terms of section 59(1) of the Act, setting out proposals revising the lifespans of certain exemptions. While views would be sought on the draft order the paper noted the current intention to reduce the time period of what constituted an ‘historical record’ to 15 years for all exemptions at section 58(1) other than those concerning ‘confidentiality’ and ‘communications with Her Majesty etc.’

14. Specifically with regard to section 41(a), in respect of the intended order, it is anticipated that the lifespan of this exemption would also reflect changes made in the UK Freedom of Information Act. That is to say that the lifespan would be for a period of until 5 years after the ‘relevant death’ (that being of Her Majesty, the heir, the second in line, the relevant member of the Royal Family, or the Sovereign reigning when the record containing the information was created) or 20 years after the information has been created – whichever occurs latest.
Consultation overview and analysis of responses

1. Consultation on the draft Amendment Bill commenced on Friday 16 December 2011 and concluded on Thursday 8 March 2012. Links to the Bill, as subject to consultation, as well as to consultation responses, can be found at: http://www.scotland.gov.uk/About/FOI/18017.

2. The consultation paper invited comment on the Scottish Government’s proposals regarding amendment to section 59 (historical periods) and section 65 (offence of altering etc records with intent to prevent disclosure). Discussion on these points follows.

3. The consultation paper also noted the Government’s intention to mirror recent amendment to UK Freedom of Information legislation concerning the exemption relating to communications with Her Majesty, as well as possible revised lifespans for those exemptions set out at section 58(1).

Historical periods (section 59)

4. The Bill, as subject to consultation, proposed that the order-making power at section 59(1) be amended to give greater flexibility to allow consideration to be given to individual exemptions and records of different descriptions.

5. Of those responding to this proposal, there was near universal support for the proposed revision:

   ‘We would consider this to be a natural progression of freedom of information legislation enhancing openness and transparency of relevant public bodies. The proposed Amendment Bill shall encourage good practice and make available information potentially of greater value to the public because of the reduction in the progression of time, in years’ (Glasgow Housing Association)

   ‘We support this change as the current ‘consolidation’ of exemptions has the effect of holding up any desired reductions in historical time period to the level of the most sensitive. It is our hope that the amendment will be a step towards further reductions in exemption times which will lead to a wider culture of transparency within public authorities’ (Scottish Council for Voluntary Organisations)

   ‘We support allowing greater flexibility to consider the lifespan of exemptions. We believe this will help encourage a more open and transparent culture and strengthen information rights’ (NHS Ayrshire and Arran)

6. However, the Commission for Ethical Standards in Public Life in Scotland expressed reservations about the proposed amendment:

   ‘we are concerned that the level of flexibility proposed will lead to a more complex and less accessible freedom of information system. We consider a set historical record period to be much preferable to the flexible approach
outlined in the draft amendment. A set time period provides for clarity and consistency

7. And while other responses were strongly supportive of the amendment, some also expressed concerns around the potential for complexity:

‘We broadly agree with the proposal...however, we would have concerns about adding further complexity to the Act, which may occur if the amendment order is selective about the exemptions, or separate paragraphs of exemptions...’ (NHS Greater Glasgow and Clyde)

‘We are supportive of reducing the 30 years exemption period for historical records...we would not wish any change to add to the administrative burden within the public sector...’ (The University of the West of Scotland)

‘in the interests of keeping legislation as simple as possible, any different provision in terms of the proposed section 59(1A) needs to be fully justified’ (Ian Cowan)

8. Scottish Ministers consider the proposed powers proportionate to purpose and that such flexibility in the order-making power is both required and justified given the range of information held by Scottish public authorities and the variety of concerns about early release of certain types of information. The proposed powers allow for exemptions, including subsections of exemptions, to be considered individually.

9. Moreover, consultation responses have demonstrated the need for flexibility, including within the same exemption. For example, responses offered differing views on whether the lifespan of the two subsections of section 36 (confidentiality) should remain at 30 years or be reduced to 15 years. With particular regard to section 36, certain responses identified considerable concern about earlier release of information relating to social work records. Other areas of concern, largely dependent on the business area of the particular public authority, were around adoption records, research material and records relating to investigations.

10. The Act already makes provision for certain types of record based on statutory definition, for example ‘health record’, and ‘personal census information’. As consultation responses indicate concerns around certain types of record and information, often in relation to particular authorities, Scottish Ministers consider it appropriate, in the interests of achieving balance between adequate protection and an appropriate level of openness, to allow for separate provision within the Bill for records of different descriptions and for different purposes.

11. In the interests of certainty, clarity will be critical in the drafting of any order putting in to effect these enhanced powers. It should also be noted that the intended order will be subject to consultation as well as affirmative Parliamentary procedure, thereby ensuring a high degree of scrutiny as well as precision in terms of how the power is used.
12. The key aim, when considering the intended order, is to ensure that it facilitates as much information being made publicly available as early as possible while continuing to provide adequate protection for areas of sensitivity.

13. Given the strong support for this amendment – and its furtherance of the Scottish Government’s objective of ensuring open, transparent and accountable government, Ministers propose to retain this amendment without change.

Secondary legislation

14. The consultation paper also invited comment on the Scottish Government’s preliminary views on the appropriate lifespans of exemptions, particularly those at section 33(1), section 36 and section 41(a). These concerning, respectively, commercial interests, confidentiality, and communications with Her Majesty etc.

15. Revision to the lifespans of exemptions identified at section 58 is dependent on a section 59 order rather than as a consequence of this Amendment Bill. Therefore, while noting the various comments made in respect of certain exemptions, such as those at section 33(1) and section 36, it would be premature to discuss the possible contents of an order arising from powers yet to be made law.

16. However, the comments will inform the development of the draft order intended to be brought forward in the event of the Scottish Parliament approving the amended section 59 order-making powers.

17. It remains the intention of Scottish Ministers to bring forward an order for consultation on completion of the Bill process. An order making changes to the lifespan of any exemption will be fully retrospective – and not solely apply to records created after the Amendment Bill becomes law. In respect of those exemptions at section 58(2), while noting the welcome given by the Campaign for Freedom of Information in Scotland in their late response to also add flexibility in respect of these exemptions, there are no plans to revise these lifespans in the anticipated order.

Royal exemption

18. A minority of responses commented specifically on the intention, in tandem with revising the lifespan of section 41(a), to include certain elements of section 41(a) in section 2(2) thereby removing the need to consider the public interest in applying the exemption to certain information.

19. Of those responding to this specific amendment a full range of opinion was offered. Contrasting from support:

‘The changes to section 41(a) bring the Scottish Act into line with the UK Act which should provide consistency in approach’ (Scottish Borders Council)

‘A common approach throughout the UK is eminently sensible’ (Northern Constabulary)

...to criticism:
‘Whilst we recognise the desire to maintain similar standards to the RUK there seems little evidence for such draconian measures…’ (Anniesland College)

20. The response from the Office of the Scottish Information Commissioner considered that the combination of limiting the requirement to apply the public interest test, and revising the lifespan of the exemption as proposed, would significantly alter the scope and nature of section 41(a). However, as long as the requirement to consider the public interest when applying the exemption remained, support was offered for the revised lifespans. The former Commissioner’s comments were generally echoed in the response from Unison.

21. As stated earlier, the Scottish Government considers it appropriate to adopt the position taken by the United Kingdom Government in respect of information relating to communications with Her Majesty, the Heir and second in line to the Throne. While noting the concerns expressed, primarily by the Scottish Information Commissioner, the Scottish Government remains of the view that, as far as such information is concerned, it is appropriate to adopt a consistent approach.

22. Scottish Ministers also consider it vital to ensure that the monarch, as well as the heir and second in line, can operate according to established constitutional conventions. Moreover, providing an appropriate level of protection from general disclosure where information of a personal nature may be involved, or in circumstances where information has been communicated in the expectation of confidentiality, reflects existing levels of protection already in the legislation, in effect tailoring these to the specific role of the Monarchy.

23. The proposed amendment is also consistent with policy formulation at the time of the original legislation in considering it reasonable to take into account common interests. In areas where it was considered advisable to ensure cross-border co-operation, exemptions in the Scottish legislation were intended to be compatible with the relevant provisions in the UK freedom of information legislation. It is suggested the same argument applies given the commonalty of the position of the Monarchy.

24. Scottish Ministers note in passing both the minimal number of requests made to Scottish Ministers where section 41(a) has relevance as well as the minimal number of applications made to the Information Commissioner for a decision on this subsection. Moreover, the modification to this subsection relates only to the monarch, heir and second in line. The requirement to consider the public interest continues to apply in respect of communications with all other members of the Royal Family, as well as with the Royal Household (other than communications concerning the monarch, heir or second in line.)

25. Finally, for purposes of clarity, the Bill confirms that communications made or received on behalf of a particular member of the Royal Family, for example, by a member of the Royal Household, are to be regarded as communications with that member.
Time limit for proceedings (section 65)

26. The Bill, as subject to consultation, proposed that the time limit for bringing a prosecution under section 65 of the Act be extended from 6 months to 12 months.

27. Of those responding to this proposal there was universal support for revision to this section in order to make it fully effective:

‘It is essential that proper safeguards and sanctions exist to encourage and monitor compliance with legitimate requests for information under the Act’ (Police Complaints Commissioner for Scotland)

‘We consider it entirely appropriate for the period of time to be extended in order to allow individuals to be duty prosecuted where they are found to be in breach…’ (General Teaching Council for Scotland)

‘We agree that the relevant time period should be increased to at least 12 months, as otherwise section 65 is unworkable and serves no useful purpose’ (NHS Greater Glasgow and Clyde)

28. However, a number of responses questioned whether revising the time limit for bringing a prosecution to 12 months would itself be fully effective:

‘It is clear that adding together the periods allowed for an individual to exhaust the internal procedures of an authority and the subsequent six month window allowed for the individual to seek a review of the authority’s decision by the Scottish Information Commissioner means that there is a likelihood that the period allowed for a conviction will have elapsed before the breach can be identified, reported and a decision taken by the fiscal to proceed’ (Scottish Legal Aid Board)

‘start the clock ticking’…at the date when evidence comes within the knowledge of the prosecutor’ (Prof Colin Reid)

‘recommend that summary proceedings…be commenced at any time within the period of six months from the date on which evidence, sufficient in the opinion of the prosecutor to justify proceedings, comes to his/her knowledge, with no proceedings being commenced more than 18 months after the commission of the offence’ (Office of the Scottish Information Commissioner)

29. The intention of Scottish Ministers is to ensure that section 65 is fully effective and allows sufficient time for a prosecution to be brought in cases of suspected offence. The Scottish Government accepts the arguments made that the period of 12 months may not allow sufficient time for an investigation to determine whether a prosecution should be brought.

30. In particular this might be the case in instances where an applicant contacts the Scottish Information Commissioner towards the end of the six-month period within which an application for a decision must be made. In the event of the
subsequent investigation being lengthy or complex it might be more than 12 months before sufficient evidence is gathered for the purposes of prosecution

31. Scottish Ministers note the various alternatives put forward by respondents - both in terms of bringing an offence within a specified time period commencing from when sufficient evidence to justify proceedings comes to the prosecutor’s knowledge, as well as in terms of an extended time limit. Scottish Ministers also note that there is considerable precedent in case law for a three year ‘long stop’ after which it would not be possible to bring a prosecution. For example, the Road Traffic Offenders Act 1988, the Computer Misuse Act 1990 and the Friendly Societies Act 1992.

32. The Bill as introduced therefore proposes that a prosecution be brought within 6 months of there being sufficient evidence in the opinion of the prosecutor to commence proceedings, with no prosecution being commenced more than 3 years after the offence.

Special Report by the Scottish Information Commissioner

33. During the course of the consultation period the outgoing Scottish Information Commissioner published his Special Report into the State of Freedom of Information in Scotland3. The report concluded with a range of actions intended to ‘protect, strengthen and clarify Scotland’s FoI law…’. While not a formal response to the consultation these actions were intended to inform discussion on proposals for the Amendment Bill – and consideration of the wider transparency agenda.

34. The Scottish Government notes the actions set out in the report. Scottish Ministers also note that the intention to amend section 65, as suggested in the report, was already subject to public consultation at the time of the report’s publication.

35. While not all the proposals are relevant to the Bill, and it is suggested that some are more appropriate for the section 60 Code of Practice providing guidance for public authorities in respect of their functions under the Act, the Scottish Government does propose to take two of the Commissioner’s proposals forward as part of the Bill.

Section 25

36. The exemption at section 25 applies to information which can be reasonably obtained other than by requesting it under the Act - in general terms information which is otherwise accessible to the applicant. Specifically, section 25(3) deems information to be ‘reasonably obtainable’ (unless an enactment exists requiring it to be communicated) only if it is made available in accordance with an authority’s publication scheme.

37. It has long been considered that the wording of section 25(3) lacks clarity (although the Act’s accompanying documents as well as the section 60 Code of

3 http://www.itsspublicknowledge.info/home/SICReports/OtherReports/SpecialReport2012.asp
Practice do provide some assistance). The proposal is therefore to improve this section by making it clearer that any information made available in line with an approved publication scheme is exempt and that the full provisions of the Act need not apply.

**Section 38**

38. An authority can respond to a request in terms of ‘neither confirm nor deny’ if the relevant information (if held) could be withheld by virtue of certain exemptions – set out at section 18(1) of the Act. At present, section 38, which provides exemption for personal information, is not one of those exemptions.

39. The proposal is therefore to add section 38 to those exemptions at section 18. This provides additional protection for personal information and also brings the Act into line with the Environmental Information (Scotland) Regulations 2004 (EIRs) where a response in terms of ‘neither confirm nor deny’ for personal data is possible (regulation 11(6)).
Next steps

1. The Scottish Government’s intention to bring forward a Freedom of Information (Amendment) (Scotland) Bill was first announced at the 2010 Holyrood Freedom of Information conference and, following the 2011 election, was included in the Programme for Government for the 2011/12 Parliamentary session. This consultation report coincides with the introduction of the Bill into Parliament.

2. The section amending the section 59(1) order-making power is unchanged and paves the way for an order in due course resulting in more information entering the public domain earlier.

3. As discussed above, Scottish Ministers have noted those concerns about the proposed extension of the section 65 time limit to 12 months – and that even this might not prove entirely adequate for purpose.

4. Following further consideration, and wider assessment of case law precedent, Scottish Ministers now propose that prosecution be commenced within 6 months of sufficient evidence coming to the knowledge of the prosecutor – and with a time limit of 3 years for commencing proceedings. This ensures that the section has the strength and effectiveness originally intended.

5. The Bill reaffirms the intention of making certain elements of section 41(a) absolute, limiting the requirement to consider the public interest when applying the exemption.

6. In addition, for complete clarity and to fully mirror UK changes, the Bill now states that communications made or received on behalf of a particular member of the Royal Family are to be regarded as communications with that member.

7. Finally, two of the recommendations put forward in the former Scottish Information Commissioner’s Special Report - as set out above - are now included in the Bill as introduced.

Parliamentary process

8. The Freedom of Information (Amendment) (Scotland) Bill has been introduced into the Scottish Parliament and will now be subject to scrutiny and debate. Full information on the Bill as introduced, as well as on the Bill process itself, can be found on the Scottish Parliament website at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills.aspx.

Secondary legislation

9. As indicated in the consultation paper, in the event of the Scottish Parliament agreeing the proposed amendment to the section 59(1) order-making powers, it is the intention to bring forward a draft order for consultation setting out the Government’s views on the appropriate lifespans for certain exemptions. At the same time a Business Regulatory Impact Assessment (BRIA) will be published.
allowing an assessment to be made of the regulatory impact of the earlier release of information.

10. At present, it is anticipated that the draft order will set out the Government’s intention to limit the lifespan of those exemptions at section 58(1) to 15 years with the exception of section 36, which will remain at 30 years, and section 41(a) which will mirror UK changes - as set out above.

**Extension of coverage of the Act**

11. Section 5 of the Act provides Scottish Ministers with the power to extend coverage of the Act to organisations which appear to exercise functions of a public nature or provide, under contract made with a Scottish public authority, any service whose provision is a function of that authority. The Scottish Government consulted on extending coverage to certain bodies in 2010 but has deferred a decision until Parliament has considered the Amendment Bill – and until the economic situation significantly improves.

**Transparency agenda**

12. The Bill forms part of the Scottish Government’s wider commitment to promoting openness and transparency. Later this year the Government intends to consult on ‘transparency’ related policy, setting out its transparency agenda and inviting views on the accessibility and usefulness of government information.
ANNEX

Relevant sections of the Freedom of Information (Scotland) Act 2002

2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that—

(a) the provision does not confer absolute exemption; and

(b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

(2) For the purposes of paragraph (a) of subsection (1), the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption—

(a) section 25;

(b) section 26;

(c) section 36(2);

(d) section 37; and

(e) in subsection (1) of section 38—

(i) paragraphs (a), (c) and (d); and

(ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

18 Further provision as respects responses to requests

(1) Where, if information existed and was held by a Scottish public authority, the authority could give a refusal notice under section 16(1) on the basis that the information was exempt information by virtue of any of sections 28 to 35, 39(1) or 41 but the authority considers that to reveal whether the information exists or is so held would be contrary to the public interest, it may (whether or not the information does exist and is held by it) give the applicant a refusal notice by virtue of this section.

(2) Neither paragraph (a) of subsection (1) of section 16 nor subsection (2) of that section applies as respects a refusal notice given by virtue of this section.
25 Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

(2) For the purposes of subsection (1), information—

(a) may be reasonably obtainable even if payment is required for access to it;

(b) is to be taken to be reasonably obtainable if—

(i) the Scottish public authority which holds it, or any other person, is obliged by or under any enactment to communicate it (otherwise than by making it available for inspection) to; or

(ii) the Keeper of the Records of Scotland holds it and makes it available for inspection and (in so far as practicable) copying by,

members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which does not fall within paragraph (b) of subsection (2) is not, merely because it is available on request from the Scottish public authority which holds it, reasonably obtainable unless it is made available in accordance with the authority’s publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

41 Communications with Her Majesty etc. and honours

Information is exempt information if it relates to—

(a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household; or

(b) the exercise by Her Majesty of Her prerogative of honour.

PART 5 - HISTORICAL RECORDS

57 The expression “historical record”

(1) For the purposes of this Part, a record becomes a “historical record” at the end of that period of thirty years which commences at the beginning of the calendar year following that in which the record is created.

(2) Where records created at different dates are for administrative purposes kept together in one file or other assemblage, all the records in that file or assemblage are to be treated for the purposes of this Part as created when the latest of those records is created.
Falling away of exemptions with time

(1) Information contained in a historical record cannot be exempt information by virtue of any of sections 28 to 30, 33(1), 36, 37, 40 and 41(a).

(2) Information cannot be exempt information by virtue of—

(a) section 41(b) after the end of that period of sixty years; or

(b) section 34(2)(b), 35 or 38(1)(c) or (d) after the end of that period of one hundred years,

which commences at the beginning of the calendar year following that in which the record containing the information is created.

Power to vary periods mentioned in sections 57 and 58

(1) The Scottish Ministers may by order amend subsection (1) of section 57 or paragraph (a) or (b) of subsection (2) of section 58 so as to substitute for the number of years for the time being mentioned in the provision in question such other number of years (not being a number which exceeds that mentioned in the provision as originally enacted) as may be specified in the order.

(2) An order under subsection (1) may contain such transitional provisions and savings as the Scottish Ministers think fit.

Offence of altering etc. records with intent to prevent disclosure

(1) Where—

(a) a request for information is made to a Scottish public authority; and

(b) the applicant is, under section 1, entitled to be given the information or any part of it,

a person to whom this subsection applies who, with the intention of preventing the disclosure by the authority of the information, or part, to which the entitlement relates, alters, defaces, blocks, erases, destroys or conceals a record held by the authority, is guilty of an offence.

(2) Subsection (1) applies to the authority and to any person who is employed by, is an officer of, or is subject to the direction of, the authority.

(3) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.