



Scotland Office, Ministry of Justice

Oifis Na H-Albainn

Mr Wyllie

[By email; request-25291-
a9481d96@whatdotheyknow.com]

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Our ref: Fol/547
Date: 29 January 2010

Dear Mr Wyllie

FREEDOM OF INFORMATION REQUEST ABOUT SCOTLAND OFFICE COMMUNICATIONS WITH DCMS REGARDING THE DIGITAL ECONOMY BILL

Thank you for your request for information under the FOI Act 2000, emailed to the Scotland Office on 31 December 2009. You requested the following:

Please provide me with information about the Scotland Office's communications with the Department of Culture, Media and Sport on the application of the Digital Economy Bill to Scotland that took place in 2008 and 2009.

Such information should extend to copies of minutes, memoranda and correspondence, in an electronic format.

The Scotland Office role with regards to legislation at Westminster includes advising UK Government departments on the devolution settlement and helping to encourage engagement with the Scottish Government during policy development. This is most especially the case where UK legislation covers areas which are not reserved at Westminster by Schedule 5 of the Scotland Act 1998. From the outset of devolution the Government has been committed to upholding the Sewel Convention; that is, the Government will not normally legislate on a devolved matter without the consent of the Scottish Parliament. Further details on the Sewel Convention and the Scotland Office role in maintaining this Convention can be found on our website: <http://www.scotlandoffice.gov.uk/scotlandoffice/38.html>

I can confirm that advice to Scotland Office from the Office of the Solicitor to the Advocate General confirmed that the content of this Bill related to reserved policy; the Scottish Government also took this view; as a result it was not necessary to seek a Legislative Consent Motion for this Bill.

In terms of Scotland Office interaction with DCMS on this Bill, I can confirm that this has consisted of telephone calls, e-mail and attendance at some meetings.

We do hold information within the scope of your request. Having conducted a review of this information I can confirm that it falls within the scope of the exemptions at section 35 and section 42 of the Freedom of Information Act 2000. Section 35 relates to policy formulation and section 42 relates to legal advice. Both exemptions are subject to the public interest test; which we have considered in this case to fall in favour of maintaining the exemption.

There is a public interest in access to information and clearer understanding of the policy making process; however this must be balanced against both the timing of any request and the need to carefully consider the space within which officials consider matters of policy, provide advice and consider options. There is also significant information available in the public domain about the Sewel Convention, its genesis, operation and details of provisions that require consent under the Convention. In this case no Legislative Consent Motion is required as the Bill's provisions are all within matters reserved under the Scotland Act 1998.

If you are dissatisfied with the decision made in relation to your request you may ask for an internal review. A request for an internal review should be addressed to:

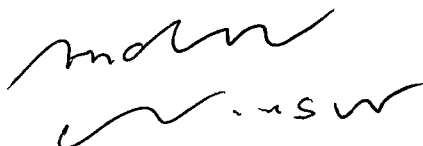
FOI Officer
1 Melville Crescent
EDINBURGH
EH3 7HW

If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner for a decision. The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
CHESHIRE
SK9 5AF

If you have any queries about this letter please contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Winsor', written in a cursive style.

Andrew Winsor
Constitutional Policy Branch
Scotland Office