

# Model Publication Scheme

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**Guide for Scottish Public Authorities**

**01 November 2018**

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Scottish Information  
Commissioner

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## **Terms used**

<b>Term used</b>	<b>Explanation</b>
<b>FOISA</b>	The Freedom of Information (Scotland) Act 2002
<b>EIRs</b>	The Environmental Information (Scotland) Regulations 2004
<b>Model Publication Scheme</b>	A standard framework for authorities to publish information under FOISA, approved by the Scottish Information Commissioner
<b>MPS</b>	The Model Publication Scheme
<b>Guide to Information</b>	A guide that every public authority adopting the MPS must produce to help people access the information it makes available
<b>MPS Principles</b>	The six key principles with which all information published under the MPS must comply
<b>Classes of information</b>	Nine broad categories describing the types of information authorities must publish (if they hold it)
<b>Notification form</b>	The form an authority must submit to notify the Commissioner of its adoption of the MPS
<b>Re-use Regulations</b>	The Re-use of Public Sector Information Regulations 2015
<b>Copyright law</b>	The Copyright, Designs and Patents Act 1988
<b>TNA</b>	The National Archives

# Section 1: Overview

## Introduction

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1. The Freedom of Information (Scotland) Act 2002 (FOISA) places a duty<sup>1</sup> on Scottish public authorities to publish information proactively. Authorities must have regard to the public interest in the information they hold and make information available so it can be accessed without having to make a request for it under section 1 of FOISA. The duty to publish is in addition to the obligation to respond to requests for information (see [Appendix 2: Publication Schemes: the legal requirements](#) for more information).
2. In addition, the Environmental Information (Scotland) Regulations (2004) (the EIRs) require authorities to publish environmental information proactively<sup>2</sup>, particularly information they hold in electronic formats.
3. Even if it were not a specific duty, there are benefits to authorities from publishing information, including:
  - Reducing the work and resources associated with information requests. If the public can access information themselves, they do not need to ask an authority to provide it.
  - Developing better relationships with stakeholders by providing access to information that helps their understanding and supports them to engage meaningfully with the authority.
  - Demonstrating the authority is open and transparent in its practice as well as intentions.
4. The Commissioner has developed a **Model Publication Scheme** (MPS) to support authorities to meet their publication scheme duties under both FOISA and the EIRs.
5. This guidance takes you through what your authority needs to do to adopt the Scottish Information Commissioner's MPS. It provides information about the MPS, the actions you will need to take and good practice tips. There is a section of answers to frequently asked questions.
6. If you don't find what you need here, we provide an enquiries service, from Monday to Friday 9:00 am to 5:00 pm. Our contact details are on the back cover of this Guide.

## About the Model Publication Scheme (MPS)

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### What is the MPS?

7. The MPS is a standard framework for Scottish public authorities to publish the information they hold.
8. By adopting the MPS, authorities commit to:

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<sup>1</sup> Section 23 of FOISA

<sup>2</sup> Regulation 4 of the EIRs

- (i) publishing, as a minimum, specified types of information, through their own Guide to Information. This sets out how people can access the information the authority publishes under the MPS.
  - (ii) ensuring all their published information meets the six **MPS principles** (see below).
9. **An authority which formally adopts the MPS and then publishes information in accordance with the MPS will meet its publication scheme duties.**
10. The Commissioner regularly updates the MPS and alerts authorities to any changes. All the documents you need are available to download at [www.itspublicknowledge.info/MPS](http://www.itspublicknowledge.info/MPS).

### **Who can adopt the MPS?**

11. The MPS can be adopted by any Scottish public authority subject to FOISA.

### **What are the benefits of the MPS to an authority?**

12. The MPS:
- (i) Provides the most efficient and effective way to secure the Commissioner's approval for a publication scheme.
  - (ii) Focuses authorities' resources on making as much information available as possible.
  - (iii) Improves accessibility of information for the public and increases consistency across the public sector in the range of information available.
  - (iv) Gives access to specific guidance and advice.

### **How does an authority adopt the MPS?**

13. There are five steps to adopting the MPS for the first time (each is explained in more detail in later sections):
- (i) Make a corporate decision to adopt the MPS **without amendment**.
  - (ii) Identify the information held by your authority that is covered by the MPS **classes of information** and any additional information in which there is a public interest in publication.
  - (iii) Produce and publish a **Guide to Information**, ensuring that the arrangements for publication meet the six **MPS Principles**.
  - (iv) Notify us that you have adopted the MPS. **You need do this only once**.
  - (v) Make arrangements to maintain and update your Guide to Information. This includes adjusting your Guide to Information in response to any future changes to the MPS.
14. **The Commissioner's approval depends on authorities complying with all the above steps. If your authority does not satisfy all the requirements, it can neither claim to have adopted a publication scheme nor to be maintaining one. The authority will therefore not be compliant with the publication scheme duty under section 23 of FOISA. The Commissioner has enforcement powers to ensure compliance.**

## When do we have to adopt the MPS?

15. New authorities adopting the MPS must do so in advance of the date they become subject to FOI.
16. As soon as you know your authority's founding or commencement date, you must start planning to adopt the MPS. Please let us know the date you will submit the notification form to us. We offer advice on preparing your Guide to Information and adopting the MPS. Do contact us if you would like support.

## The MPS Principles

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17. The MPS imposes six principles which govern the way authorities must make their information available through their Guides to Information:
  - Principle 1: Availability and formats
  - Principle 2: Exempt information
  - Principle 3: Copyright and re-use
  - Principle 4: Charges
  - Principle 5: Advice and assistance
  - Principle 6: Duration
18. Each principle is explained in detail in [The MPS Principles](#).

# Section 2: Preparing for Adoption

## Making the decision to adopt the MPS

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19. Your authority needs to take a formal decision to adopt the MPS. In practice, many authorities take the decision at committee or board level, but it can be taken on behalf of the authority by any person or group with delegated responsibility.
20. When you are recommending your authority adopts the MPS, it may be helpful to point colleagues to the introductory section of this Guide to remind them why the authority must adopt a publication scheme. [Appendix 2: Publication Schemes: the legal requirements](#) also sets out the legal context. It is important to reach a common understanding in the authority about the commitment it is making and to ensure there is management support for the work you have to do.
21. Once the decision has been taken to adopt the MPS, you need to communicate the decision as widely as possible across your organisation. Many of the steps will require support from colleagues in other business areas and they need to know that your authority plans to adopt the MPS. In due course, *everyone* in your authority will need to know about your Guide to Information when it is published so that they can respond to enquiries about it and contribute to keeping it up to date.
22. If your authority does not adopt the MPS, the Commissioner will require it to produce a bespoke publication scheme which meets the minimum good practice standard of the MPS. The development and approval of a bespoke publication scheme is time-consuming and burdensome for the authority. **The Commissioner therefore strongly recommends the adoption of the MPS.** See [FAQs](#) for more information.

## Deciding what information to publish

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23. When deciding what to publish, authorities have a **statutory duty** to have regard to the public interest in the information they hold. That is, you must think about the **audience** for your published information, and identify what information you *ought* to make available to them. As section 23(3) of FOISA explains, there is a specific public interest in information about:
  - authority decisions, and the facts and analysis that inform them
  - the functions and services provided by authorities, including the cost of services and their performance.
24. Investing time and effort to decide what to publish brings benefits beyond simple compliance with publication scheme duties. The more information your authority makes available as a matter of course, the easier you and your colleagues will find responding to information requests.
25. The MPS sets out nine classes (or types) of information that authorities **must publish if they hold information of that type**.
26. In [Appendix 1: Types of information under the MPS classes](#) we provide detailed lists of the information the Commissioner expects authorities to publish under each class. The

Commissioner's lists focus on where there is a clear public interest in making information available e.g., where:

- (i) FOISA says there is a public interest (see para 24)
- (ii) there is a statutory requirement to publish
- (iii) it is recognised good practice to publish
- (iv) the type of information is often requested and generally disclosed under FOI law.

- 27. You can use the Commissioner's lists like a checklist to help you assess the information you hold.
- 28. If your authority does not hold information under any of the classes, don't delete the class in your Guide to Information. Add a statement "No information held under this class".
- 29. The Commissioner's lists are not exhaustive or restrictive. They set out the **minimum** for all authorities. Authorities have different functions, so **you will still need to consider whether there is additional information that your authority holds and ought to publish in the public interest in respect of each function.**

#### *Research and information services*

- 30. Research and information services are not "publications". They involve creating new information (including "certificates"), from other information the authority holds and may publish. The new information is not actually available until it has been commissioned and created. The information is not already prepared and available to anyone to access easily and quickly. So it cannot be considered to be "published".
- 31. Examples of research and information services include:
  - (i) certified extracts from registers
  - (ii) family history searches
  - (iii) property enquiry certificates
- 32. If your authority offers such services, you can *advertise* them through your Guide to Information as it may help the reader to know that you offer the service. But do **not** include them in the lists of information your authority publishes through the MPS.

#### **Preparing a Guide to Information for new authorities**

- 33. If you work for an authority new to FOI, we recommend that you carry out a full "information audit", using the classes of information to guide you. For example, ask business areas to list the types of information they hold relating to each class and indicate for each category whether it should or should not be published.
- 34. If your authority is starting from scratch, you may find that you have very little information under each of the classes of information. This is understandable. You must, however, make plans to update your Guide to Information as the information you hold grows. This is a great opportunity to set up procedures for updating your Guide to Information on a regular basis (see **Section 5** for more information).

35. If your new authority is as the result of a merger with, or replacement of, existing authorities, you'll be able to bring together previous Guides to Information. You'll still need to consider the public interest in the new authority's information as this may have changed.

# Section 3: Guides to Information

## What is a guide to information?

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36. Your Guide to Information is effectively an “index” of the information you publish and a “how to” guide to access it. When developing your Guide to Information, it is helpful to think of it as a practical, user-friendly resource for the public, helping them to access the information you publish.
37. The format your Guide to Information takes, e.g. a document, webpages or an A-Z, is dependent on what suits your audience (and organisation) best.
38. Whatever format it is presented in, your guide **must** set out:
  - (i) What information your authority publishes under each class
  - (ii) How to access the information
  - (iii) Whether you charge for the information (if you do, you must say both what the charges are and when they apply)
  - (iv) Contact details for advice and assistance to access information.
39. You should maintain a record of what information was published and when it was available. You will need this record in the event of a dispute.
40. The Guide to Information **must** be published on your authority’s website and it must be possible to find it through a simple search of the website. You should test whether it actually comes up in search results for e.g. “Guide to Information”, or “Publication Scheme”.
41. It is good practice to link your Guide to Information to “freedom of information” or “publications” links on your home page.

## Meeting the MPS Principles

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### The 6 MPS Principles

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1:</b> Availability and formats | <b>4:</b> Charges               |
| <b>2:</b> Exempt information       | <b>5:</b> Advice and assistance |
| <b>3:</b> Copyright and re-use     | <b>6:</b> Duration              |

42. **The access arrangements for all the information in your authority’s Guide to Information must meet the MPS Principles.**
43. The principles are explained in more detail below.

## Principle 1: Availability and formats

### Definition:

- Information published through the MPS should, wherever possible, be made available on the authority's website.
- There must be an alternative arrangement for people who cannot reasonably access the information either online or by inspection at the authority's premises. An authority may e.g., arrange to send out information in paper copy on request (although there may be a charge for doing so).

44. Guides to Information must clearly state how to access the published information.
45. The term "publication" has a specific meaning in FOI law. "Published" information is available for anyone to access easily.
46. One of the main benefits for public authorities of publishing information under a publication scheme is that the information will be exempt from disclosure (section 25(3)) in the event that someone makes an information request for it under section 1(1) of the FOI Act.
47. This means that, information published through the MPS must be reasonably accessible to all.
48. As our [Briefing on Section 25 \(Information otherwise obtainable\)](#) explains:

"This is one of the few exemptions in FOISA where the identity of the requester is relevant. This is because the exemption applies to information which the requester can reasonably obtain. Information may be generally accessible to the public at large, but not to an individual requester, if their personal circumstances prevent them from obtaining it. For example, a person with a visual impairment might not be able to access information provided only on a website, while it might not be reasonable to expect someone who lives a long way from the public authority's offices to travel to see the information."

### **For this reason, authorities cannot claim to "publish" information if it is available only by inspection or online.**

49. It is for your authority to decide how to meet this MPS principle. Most authorities meet it by providing a combination of access opportunities, including:
  - (i) Making the information available online, allowing people to access the information for themselves without contacting the authority. It is good practice to provide direct web links in the Guide to Information. It's not enough to merely point to the home page, or ask people to use the website search engine.
  - (ii) Offering a telephone or email service for the public to ask for paper copies to be printed out and posted to them. It is acceptable to ask the requester to meet the costs of providing the information in this way (see principle 4).
50. Authorities must also comply with the Equality Act 2010. This means they must also be prepared to meet requests for information in alternative formats.

51. Information published through Class 9 (Open Data) is exempt from **Principle 1**. By its nature, open data is generally available in only electronic format and cannot easily be provided in other formats. (See the Scottish Government's [Open Data Resource Pack](#)<sup>3</sup> for the accessibility requirements for this class of information).

## Principle 2: Exempt information

### Definition:

If information described by the classes cannot be published and is exempt under Scotland's freedom of information laws e.g., sensitive personal data or a trade secret, the authority may withhold the information or provide a redacted version for publication, but it must explain why it has done so.

52. Authorities adopting the MPS must publish all the information they hold that falls within the classes of information.
53. The exempt information principle allows authorities to decide to not publish information, but only if that information would be exempt under FOISA or the EIRs.
54. For example, there is a strong public interest in the decisions authorities take at board or committee meetings, so as a general rule, their minutes should be published. But there may be times when they cannot be published. Board or committee meetings may contain: personal data where disclosure would contravene the data protection principles, or information about contracts where disclosure would damage someone's commercial interests.
55. In such cases, you should consider whether a redacted version could be published or whether the information must be withheld in full.
56. Your Guide to Information should also explain that the authority does hold the particular type of information but that it is not published. You do not need to provide a full description of the exemption or exception relied on e.g., "contains personal data" would indicate that an exemption in section 38 of FOISA would apply. It is good practice to consider whether you could provide other information about the function or service to help the public understand your work. For example, if your authority carries out investigations, you may not be able to reveal details of individual investigations, but you could provide a statement or case study which would explain how you conduct investigations in general terms or, as the Commissioner does, publish your investigation procedures.

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<sup>3</sup> <https://beta.gov.scot/publications/open-data-resource-pack-9781786524034/>

### Principle 3: Copyright and re-use

#### Definition:

- The authority's Guide to Information must include a copyright statement which is consistent with the fair dealing provisions of the Copyright, Designs and Patents Act 1988. Where the authority does not hold the copyright in information it publishes, this should be made clear.
- Any conditions applied to the re-use of published information must be consistent with the Re-Use of Public Sector Information Regulations 2015.

57. You must include a statement on both copyright and re-use of information in your Guide to Information. This is important because the public need to know exactly what they can (and cannot) do with the information you make available. There have been substantial legislative changes to both copyright law and Re-use Regulations<sup>4</sup>, so you need to review and may need to revise statements you have used in past editions of your Guide to Information.
58. In particular, the Re-use Regulations impose new statutory requirements to what used to be a voluntary framework. The UK Information Commissioner has produced a helpful [guide to the Re-use Regulations](#)<sup>5</sup> for public sector bodies to explain the duties and what authorities need to do.
59. The National Archives (TNA) has produced substantial [guidance on copyright and re-use](#)<sup>6</sup>.
60. The Commissioner recommends that authorities adopt the TNA's [Open Government Licence](#)<sup>7</sup> for all their published information. This licence sets out clear terms and conditions for both copyright and re-use. TNA provides additional information licences which may be more suitable for particular types of information. If an authority has adopted one of TNA's licences, it can use TNA's sample wording for Copyright Notices (see TNA's [Links between access and re-use](#)<sup>8</sup> guidance) as its copyright and re-use statement.
61. Alternatively, your authority can produce its own copyright and re-use statement, as long as it is compliant with the legislative provisions governing copyright and re-use.
62. In most cases, your authority will hold the copyright in the information you make available under your Guide to Information. Where you publish third party copyright information you must make that clear e.g., where local authority planning registers provide access to plans created by third parties, they should explain who owns the copyright where it applies.

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<sup>4</sup> The Copyright, Designs and Patents Act 1988 and The Re-use of Public Sector Information Regulations 2015.

<sup>5</sup> <https://ico.org.uk/for-organisations/guide-to-rpsi/>

<sup>6</sup> <http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/copyright-and-re-use/>

<sup>7</sup> [www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/](http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/)

<sup>8</sup> <http://www.nationalarchives.gov.uk/documents/information-management/links-between-access-and-re-use.pdf>

## Principle 4: Charges

### Definition:

- The Guide to Information must contain a charging schedule, explaining any charges and how they will be calculated.
- No charge may be made to view information on the authority's website or at its premises, except where there is a statutory fee e.g., for access to some registers.
- The authority may charge for computer discs, photocopying, postage and packing and other costs associated with supplying information. The charge must be no more than these elements actually cost the authority e.g. cost per photocopy or postage. There may be no further charges for information in Classes 1 – 7 and 9. An exception is made for commercial publications (see **Class 8: Our commercial publications**) where pricing may be based on market value.

63. Your Guide to Information must state any charges that apply. If an authority intends to charge, it must publish a charging schedule in its Guide to Information. **If there is no schedule, the authority cannot impose a charge.**
64. You do not *have* to charge for published information. Most authorities have decided to make their information available free of charge. Sometimes fees are set by statute e.g., as regards some of the information published by the Registers of Scotland.
65. Any charges must be consistent with the following **charging criteria**:
  - (i) Any charges must be "reasonable". That is, the charge must not be more than it costs the authority to provide the information e.g., the actual postage cost. Photocopying charges should reflect only the cost per copy and a relevant proportion of the cost of any consumables. As a general guide, it is expected that a photocopying charge will be significantly less than a commercial copying service. Where printed materials are published, an authority can derive a cost per copy from the total printing price, divided by the number of copies.
  - (ii) Authorities cannot try to recoup the cost of creating the information in the first place. So staff time for researching or drafting information cannot be charged.
66. The above charging criteria are consistent with the charging rules for environmental information in regulation 8(3) of the EIRs.
67. The MPS charging principle applies to information made available through [Class 8: Our commercial publications](#), but the charging *criteria* do not. This class describes information sold at market value through a retail outlet such as a bookshop, museum or research journal. That market value can include the cost of creating the information. The authority can charge the market value for access to such information.
68. Your authority must specify any charges it makes for re-use of information. We recommend you consider adding these to your charging schedule. Under the [Re-Use of Public Sector](#)

[Information Regulations 2015](#)<sup>9</sup>, in most cases authorities should make their information available for re-use under an open licence and at “marginal cost”. There are links to helpful guidance on re-use in **Principle 3: Copyright and re-use** above.

## Principle 5: Advice and assistance

### Definition:

- The authority must provide contact details for enquiries about any aspect of the adoption of the MPS, the authority’s Guide to Information and to ask for copies of the authority’s published information.
- The authority’s Guide to Information must provide contact details to access advice and assistance to request unpublished information.

69. Your authority is already under a duty to provide reasonable advice and assistance to anyone who wants to request unpublished information, under section 15 of FOISA and regulation 9 of the EIRs.
70. The MPS requires authorities to provide a similar level of service for published information.
71. Your Guide to Information must provide contact information so the public can ask for help with finding information. It is essential that the help is available when it is asked for.
72. Your Guide to Information must also explain how to access information which is not published. Most authorities do this by publishing guidance on making information requests.

## Principle 6: Duration

### Definition:

Once published through the Guide to Information, the information should be available for the current and previous two financial years. Where information has been updated or superseded, only the current version need be available (previous versions may be requested from the authority under section 1(1) of FOISA).

73. Information must be available for at least two years following publication. Authorities can decide to continue to publish information for a longer period.
74. Where information is continually updated e.g., lists of current applications, it may be confusing to the public to provide outdated information. In this case, the authorities should provide only the current version. If someone wants to see older versions of the information, they can make a request to the authority for it under section 1(1) of FOISA.

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<sup>9</sup> [www.legislation.gov.uk/uksi/2015/1415/contents/made](http://www.legislation.gov.uk/uksi/2015/1415/contents/made)

75. Public authorities should have arrangements in place to regularly and routinely update their Guide to Information. Your Guide to Information must therefore contain a 'last reviewed' date to show when it was last updated.

## Section 4: Notifying the Commissioner

76. Authorities must notify the Commissioner when they adopt the MPS for the first time. Notification is a required step in adopting the MPS.
77. The notification process is simple. Just download, complete and return the [Notification Form](#)<sup>10</sup> and send it to [publicationschemes@itspublicknowledge.info](mailto:publicationschemes@itspublicknowledge.info)
78. We **will not accept** incomplete Notification Forms. We require the direct website address (URL) of the publication of your authority's Guide to Information so we can check compliance. If you are working to a deadline, you must factor in the time to publish the Guide to Information online. If you depend on someone else to do the web publishing, it's a good idea to alert them to your timescales.
79. The Notification Form indicates the information that we will publish about your adoption of the MPS.
80. When you submit the form to us you'll receive an autoreply to acknowledge our receipt of your form. We aim to issue you with a formal response within two weeks of submission.
81. **Once you have submitted a notification form to us, you will not have to do it again unless:**
  - (i) **the Commissioner's approval of your adoption of the MPS has been revoked because your authority has not complied with it, or**
  - (ii) **your authority's legal status changes e.g., it merges with another authority, or there is a change of legal name.**

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<sup>10</sup>[www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/PublicationSchemeResources.aspx](http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/PublicationSchemeResources.aspx)

## Section 5: Reviewing and maintaining your Guide to Information

82. The final step is to make sure you have arrangements in place to regularly and routinely update your Guide to Information. This is a statutory duty<sup>11</sup>. You must also update your Guide to Information to reflect any changes to the MPS (the Commissioner will alert you to any such changes). Some of the documents in your authority's Guide to Information will already be produced as part of routine business processes e.g., minutes of committee or board meetings. It is relatively easy in these circumstances to agree who is responsible for adding new documents to the Guide to Information.
83. It is just as important to make sure new types of information are added to the Guide to Information as the work of your authority changes over time. There are many ways to do this and you'll need to find the way that works for your authority.
84. Your Guide to Information should include a date when it was last reviewed. This will help you ensure that it is up to date and complies with the most recent Model Publication Scheme issued by the Commissioner.

### Review Resources

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#### Self-assessment toolkit module

85. The Commissioner's Self-assessment Toolkit ([www.itspublicknowledge.info/toolkits](http://www.itspublicknowledge.info/toolkits)) includes a specific module on publishing information. The outcomes provide assurance and tangible evidence of the authority's openness and transparency, a principle of Best Value.
86. The module takes the user through a set of steps (similar to an internal audit) to:
  - (i) Capture publication activity
  - (ii) Assess how well your authority is performing against a set of publication standards
  - (iii) Identify areas for improvement across your authority.

#### Model Publication Scheme compliance monitoring

87. The Commissioner periodically assesses public authorities' adoption of the MPS and compliance with the publication duty. This provides valuable evidence to inform your own reviews of your authority's publication practice. Reports on the Commissioner's findings will be published at: [www.itspublicknowledge.info/research](http://www.itspublicknowledge.info/research).

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<sup>11</sup> Section 23(1)(c) of FOISA

## Good practice

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88. Some common good practice approaches taken by authorities to reviewing and maintaining their Guides include:
- (i) Setting review dates as part of the approval process
  - (ii) Maintaining a schedule of information due for publication
  - (iii) Training staff to think about publication as they prepare information (“thinking FOI” as they write, marking information for redaction at publication)
  - (iv) Making the decision to publish information a deliberate step when new information is approved
  - (v) Incorporating processes for checking and updating the Guide to Information as part of the procedures for updating and reviewing documents and records management procedures and systems.
89. If you don’t have such internal processes, you can still look proactively for new information that your authority ought to publish. The following sources will often help you spot new information:
- In-house newsletters and committee / board minutes
  - Press cuttings and external news releases about your authority’s activities
  - Information requests to your authority.

# FAQs

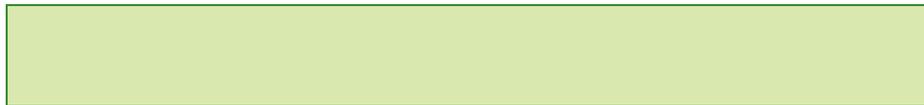
These are the questions we are most often asked about publication schemes. If you have a question that is not included, please contact us. We'll answer your question and consider whether it should be added here.

## Adopting the MPS

### *Do we have to use the MPS? Can't we produce our own publication scheme?*

You do not have to adopt the MPS. You are entitled to produce your own bespoke scheme. **But the Commissioner does not recommend it.**

Experience and feedback shows that bespoke schemes are not efficient and can be burdensome for the authority. They also lead to delays in approval.



Not only is adoption of the MPS easier and more efficient for an authority, it helps requesters too. It gives greater consistency for the public about how the Scottish public sector publishes information and therefore makes it easier for them to find information.

If you want to explore a bespoke scheme, contact us as soon as possible. We will ask you to specify the issues you have with the MPS and we will first attempt to resolve those issues before we will consider approving a bespoke scheme. If we are asked to approve a bespoke scheme, we will test it against the standard of the MPS.

### *Can a group of authorities produce their own model publication scheme?*

Section 24 of FOISA allows for the development of model publication schemes that can be adopted by more than one authority. The Commissioner used this provision when developing the MPS.

We do not encourage the development of more model publication schemes because the MPS provides a consistent framework for the public. If you feel that the MPS is not suitable for your authority, please tell us about the problems you are having so that we can look for a solution.

Several groups of authorities have worked together to produce template Guides to Information. This approach has helped authorities in those sectors identify other information they ought to publish, over and above the MPS.

## Deciding what information to publish

### *What is "publication"?*

Publication has a slightly different meaning under FOI than in everyday usage. In terms of FOI it simply means making available information that is already prepared. The information must be available to anyone and easy to access quickly without having to make a request for it.

***Can we delete a class if we don't hold any information that would be covered by it?***

No. But the MPS does not ask you to publish information that you do not hold! Even if some of the classes in your Guide to Information are empty, do not delete them (it is an important principle of the MPS that it is adopted without amendment). You can add notes to your Guide to Information to explain why your authority does not hold particular types of information.

***Do we have to create information for a class?***

No, if the authority does not hold information, there is no requirement to create or publish it. If you think that your authority ought to have a particular type of information, then you can decide to produce it in the future.

***Some of the information we hold falls within the classes of information, but we can't publish it because it is sensitive. What do we do?***

See

Principle 2: Exempt information. If information is exempt under FOISA or the EIRs e.g., sensitive personal information or a trade secret, you should remove or redact the information before publication and explain why you have done so.

It is better to publish a redacted document with an explanation, than to not publish it at all. But if you do publish redacted information, remember that some redactions might be time-sensitive, so will need to make sure redactions are reviewed periodically.

***My authority has a lot of information not captured by the classes of information, can we publish it in our Guide to Information?***

Yes. The MPS is the *minimum* information we expect authorities to publish. You can add more information to your Guide to Information. And if you think that the MPS could be improved, please do share your suggestions with us.

***Should we publish environmental information in our Guide to Information?***

Yes. Your Guide to Information should contain environmental information relevant to the classes of information. The publication scheme duty applies equally to environmental and non-environmental information. Section 73 of FOISA (Interpretation) does not make a distinction between environmental and non-environmental information. In any case, regulation 4 of the EIRs requires authorities to actively disseminate to the public the environmental information (relevant to its functions) that it holds. So the MPS will help you meet your EIRs duty too.

***We provide a research / information service. Can we publish it in our Guide to Information?***

No. See **Research and information services**. The service itself does not offer something that is pre-prepared and therefore you cannot claim that it is a "publication". For example, certified extracts from registers, family history searches and property enquiry certificates involve creating new information from other information which may already be published. The new information, or certificate, does not actually exist until someone asks you to create it. So it is not already prepared and available to anyone to access easily and quickly without having to make a request for it. Therefore it is not a "publication" in terms of FOISA.

## Availability and formats

***We have added new information to our Guide to Information, but it isn't yet available online. Is it acceptable to provide a telephone number to ask for the information in the meantime?***

Yes, but...! Such an arrangement should only be a temporary solution. You should have a firm plan to publish the information in the near future and, where possible, include the intended date in your Guide to Information. Not only is this good practice, but, if you receive an information request for the information, it will help you apply the exemption in section 27(1) of FOISA (information intended to be published in future), as it shows that you actually do intend to publish the information.

## Charging for information

***My authority has already set charges for publications and they are not the same as the MPS, is this OK?***

No. All charges for publications in the Guide to Information must comply with the MPS principles. If an authority's agreed charges are not consistently applied, then the authority is not complying with the MPS and the authority does not have an approved publication scheme. This would be a breach of section 23 of FOISA.

We recommend that you raise the issue within your authority as soon as possible. It may help you to explain that the MPS charging principles were informed by case precedent under FOISA, the EIRs, and the Re-Use of Public Sector Information Regulations 2015.

***My authority produces a range of printed publications, e.g. strategic and regional plans – will these fall within Class 8?***

It is unlikely. The test for Class 8 publications is whether the information could be sold through a commercial retailer. If, and only if, a commercial bookseller could stock and sell the information, can it be published through Class 8.

***Do we have to move all the Open Data we publish to Class 9 even though it falls within the description of other classes?***

No. You can continue to publish Open Data throughout your authority's Guide to Information. You need to make sure that Class 9 sets out your authority's open data strategy and signposts people to the open data published.

## Duration

***How long must we publish information for?***

The MPS requires you to publish information for the current and last two financial years. You can publish it for longer if it suits your business needs or you feel that there is a public interest in older information.

***We're adding a new type of information. The MPS says we must publish information for the current + 2 years. How could we publish information we don't have?***

You don't have to – you're only expected to publish information you have.

## Legal requirements

### ***Is my organisation subject to the publication scheme duty?***

If your organisation is subject to FOISA, it is subject to the publication scheme duty. If your organisation is a Scottish public authority listed in Schedule 1 of FOISA, a publicly owned company as defined by section 6 of FOISA or has been designated by Scottish Ministers as a Scottish public authority for the purposes of FOISA, it is subject to the publication scheme duty. You can read more about who is subject to the legislation on our website at [www.itspublicknowledge.info/WhoCanIAsk](http://www.itspublicknowledge.info/WhoCanIAsk).

If your organisation is subject only to the EIRs (and not to FOISA), then it is not subject to the publication scheme duty. But be aware that the EIRs require proactive publication of environmental information.

Even if you are not covered, there is nothing to stop you following the MPS approach (although you will not have the Commissioner's formal approval and the public will not be able to complain to us about any compliance issues).

### ***What happens if an authority doesn't adopt a publication scheme?***

Failing to adopt a publication scheme is a breach of a statutory duty. The Commissioner will invoke her [Enforcement Policy](#)<sup>12</sup> if an authority fails to adopt a scheme. We will give your authority notice that it has failed to comply with a provision of FOISA and we will enforce the notice as required. The Commissioner may refer a failure to comply with the notice to the Court of Session, where the failure to comply can be treated as contempt of court.

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<sup>12</sup> [www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx)

# Appendices

## Appendix 1: Types of information under the MPS classes

The classes of information are set out, with a list of the types of information that the Commissioner would expect to provide through the MPS, **where the authority holds that information**.

Class 1: About the authority
<p><b>Description</b></p> <p>Information about the authority, who we are, where to find us, how to contact us, how we are managed and our external relations</p> <p>The Commissioner expects authorities to publish the following information (if held), <b>as a minimum:</b></p>
<i>General information about the authority</i>
<ul style="list-style-type: none"> <li>• Authority name, address and contact details for headquarters and principal offices</li> <li>• Organisational structure, roles and responsibilities of senior officers</li> <li>• Business opening hours</li> <li>• Contact details for customer care and complaints functions</li> <li>• Customer codes or charters</li> <li>• Publication scheme and Guide to Information</li> <li>• Charging schedule for published information</li> <li>• Contact details and advice about how to request information from the authority</li> <li>• Charging schedule for environmental information provided in response to requests under the EIRs (if the authority charges for environmental information)</li> <li>• Legal framework for the authority, including constitution, articles of association or charter</li> </ul>
<i>How the authority is run</i>
<ul style="list-style-type: none"> <li>• Description of governance structure, Board, committees and other decision making structures</li> <li>• Names, responsibilities and (work-related) biographical details of the people who make strategic and operational decisions about the performance of function and/or delivery of services by the authority e.g. Board members, chief officers</li> <li>• Governance policies, including standing orders, code of conduct and register of interests</li> </ul>
<i>Corporate planning</i>
<ul style="list-style-type: none"> <li>• Mission statement</li> <li>• Corporate plan</li> <li>• Corporate strategies e.g., for economic development, etc.</li> <li>• Corporate policies, e.g., health and safety, equality, sustainability</li> <li>• Strategic planning processes</li> </ul>
<i>External relations</i>
<ul style="list-style-type: none"> <li>• Accountability relationships, including reports to regulators</li> <li>• Internal and external audit arrangements</li> <li>• Subsidiary companies (wholly and part owned) and other significant financial interests</li> <li>• Strategic agreements with other bodies</li> </ul>

## Class 2: How we deliver our functions and services

### Description

Information about our work, our strategy and policies for delivering functions and services and information for our service users.

The Commissioner expects authorities to publish the following information (if held), **as a minimum:**

### Functions

- Description of functions, including statutory basis for them, where applicable
- Statement of public task required by the [Re-use of Public Sector Information Regulations 2015](#)<sup>13</sup> (if applicable)
- Strategies, policies and internal staff procedures for performing statutory functions
- How to apply for a licence, warrant, grant, etc. where it is a function of the authority to approve it
- How to report a concern to the authority
- Reports of the authority's exercise of its statutory functions
- Statutory registers (NB not if inspection-only)
- Fees and charges for performance of the authority's function e.g., fee for making a planning application, etc.

### Services

- List of services, including statutory basis for them, where applicable
- Service policies and internal staff procedures, including allocation, quality and standards
- Service schedules and delivery plans
- Information for service users, including how to access the services
- Service fees and charges, including bursaries

## Class 3: How we take decisions and what we have decided

### Description

Information about the decisions we take, how we make decisions and how we involve others.

The Commissioner expects authorities to publish the following information (if held), **as a minimum:**

- Decisions taken by the organisation: agendas, reports and papers provided for consideration and minutes of Board (or equivalent) meetings
- Public consultation and engagement strategies
- Reports of regulatory inspections, audits and investigations carried out by the authority
- Environmental Impact Assessment Reports undertaken in compliance with the [Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#)<sup>14</sup>

<sup>13</sup> [www.legislation.gov.uk/uksi/2015/1415/contents/made](http://www.legislation.gov.uk/uksi/2015/1415/contents/made)

<sup>14</sup> <http://www.legislation.gov.uk/uksi/2017/571/contents/made>

## Class 4: What we spend and how we spend it

### Description

Information about our strategy for, and management of, financial resources (in sufficient detail to explain how we plan to spend public money and what has actually been spent).

The Commissioner expects authorities to publish the following information (if held), **as a minimum:**

- Financial statements, including annual accounts, any regular statements e.g. quarterly budget statements.
- Financial statements required by statute e.g., sections 31 and 33 of the [Public Service Reform \(Scotland\) Act 2010](#)<sup>15</sup>, if applicable to the authority
- Financial policies and procedures for budget allocation
- Budget allocation to key policy / function / service areas
- Purchasing plans and capital funding plans
- Financial administration manual / internal financial regulations
- Expenses policies and procedures
- Senior staff / board member expenses at category level e.g., travel, subsistence and accommodation
- Board member remuneration other than expenses
- Pay and grading structure (levels of pay rather than individual salaries)
- Investments, summary information about endowments, investments and authority pension fund
- Funding awards available from the authority, how to apply for them and funding awards made by the authority

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<sup>15</sup> <http://www.legislation.gov.uk/asp/2010/8/contents>

Class 5: How we manage our human, physical and information resources
<p><b>Description</b></p> <p>Information about how we manage the human, physical and information resources of the authority</p> <p>The Commissioner expects authorities to publish the following information (if held), <b>as a minimum:</b></p>
<i>Human resources</i>
<ul style="list-style-type: none"> <li>• Strategy and management of human resources</li> <li>• Staffing structure</li> <li>• Human resources policies, procedures and guidelines, including e.g., recruitment, performance management, salary and grading, promotion, pensions, discipline, grievance, staff development, staff records</li> <li>• Employee relations structures and agreements reached with recognised trade unions and professional organisations</li> </ul>
<i>Physical resources</i>
<ul style="list-style-type: none"> <li>• Management of the authority's land and property assets, including environmental / sustainability reports</li> <li>• Description of the authority's land and property holdings</li> <li>• Estate development plans</li> <li>• Maintenance arrangements</li> </ul>
<i>Information resources</i>
<ul style="list-style-type: none"> <li>• Records management policy and records management plan, including records retention schedule</li> <li>• Information governance / asset management policies and procedures, information asset list</li> <li>• Knowledge management policies and procedures</li> <li>• List of statistical information published by the authority</li> <li>• Freedom of information policies and procedures</li> <li>• Data protection or privacy policy</li> </ul>

Class 6: How we procure goods and services from external providers
<p><b>Description</b></p> <p>Information about how we procure works, goods and services, and our contracts with external providers.</p> <p>The Commissioner expects authorities to publish the following information (if held), <b>as a minimum:</b></p>
<ul style="list-style-type: none"> <li>• Procurement policies and procedures</li> <li>• Invitations to tender</li> <li>• Register of contracts awarded, which have gone through formal tendering, including name of supplier, period of contract and value</li> <li>• Additional information which is required to be published by applicable procurement legislation and statutory guidance (e.g. the Procurement Reform (Scotland) Act 2014, the Procurement</li> </ul>

(Scotland) Regulations 2016 and Public Contracts (Scotland) regulations 2015)

- Links to procurement information the authority publishes on the [Public Contracts Scotland](#)<sup>16</sup> website

## Class 7: How we are performing

### Description

Information about how we perform as an organisation, and how well we deliver our functions and services.

The Commissioner expects authorities to publish the following information (if held), **as a minimum:**

- External reports e.g., annual report, performance statements required by statute (e.g., section 32 of the Public Service Reform (Scotland) Act 2010 if applicable).
- Performance indicators and performance against them.
- Mainstreaming Equality Reports produced under the [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#)<sup>17</sup>, as amended
- Employee and board equality monitoring reports, produced under the [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#), as amended

## Class 8: Our commercial publications

### Description

Information packaged and made available for sale on a commercial basis and sold at market value through a retail outlet e.g., bookshop, museum or research journal.

## Class 9: Our open data

### Description

Open data made available by the authority as described by the Scottish Government's [Open Data Resource Pack](#)<sup>18</sup> and available under an open licence.

The Commissioner expects authorities to publish the following information (if held), **as a minimum:**

- The authority's open data publication plan
- Open data sets and their metadata, or links to where they are accessible

<sup>16</sup> <http://www.publiccontractsscotland.gov.uk/>

<sup>17</sup> <http://www.legislation.gov.uk/ssi/2012/162/contents/made>

<sup>18</sup> <https://beta.gov.scot/publications/open-data-resource-pack-9781786524034/>

## Appendix 2: Publication Schemes: the legal requirements

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1. Section 23 of FOISA sets out the legal requirements for publication schemes. Section 23 requires Scottish public authorities to adopt and maintain a publication scheme that has the approval of the Scottish Information Commissioner. Publication schemes describe the information that the authority makes available to the public without them having to ask for it.
2. Section 23 also sets out that publication schemes must:
  - (i) Contain the classes (or types) of information that the authority publishes or will publish
  - (ii) Explain the manner in which the information is published or will be published.
  - (iii) State whether there is a charge for the information.
3. When formulating a scheme, an authority must consider the public interest in the information that it holds, particularly in allowing public access to:
  - (i) Information about services, the cost of services and the standards attained.
  - (ii) Facts or analysis which informed decisions of importance to the public
  - (iii) The reasons for decisions taken.
4. Authorities must publish their publication schemes and review them from time to time.



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