

The BSA Scotland Group brings together large and small businesses and VCSE organisations delivering

6. The broad questions rightly identified in the consultation are whether there are gaps in the existing system and what the consequences might be of various possible changes:
 - First there is the option of publicising the existence of existing powers.
 - Second there is the possibility of 'stronger guidance' regarding when, under the existing regime, information held by a contractor ought to be considered 'held on behalf' of the relevant contracting public authority for the purposes of FOISA and the EIRs⁴. We have no objection to guidance clarifying and embedding the current system, subject to the assessments set out below of the impact of any of such guidance on SMEs in particular.
 - Third, nor have we objection in principle to the idea of further legislation if this is shown still to be required, but we concur with the Scottish Government's view – namely that it is not at the current time persuaded of the necessity of new primary legislation in relation to FOISA⁵. We agree that the current legislative regime in Scotland is 'fundamentally sound and... working well', and note the possible effects, as set out in the consultation document, of further changes on businesses and the voluntary sector. Ultimately any such costs may impact on the costs of contracts for the public sector itself, and therefore on the public purse, at a time when the powers required for the transparency we support would seem already to exist.
Ultimately therefore we agree with the consultation document that 'the case for any new primary legislation must be thoroughly tested - and should only be considered where there are no satisfactory routes for improving the operation of the information rights regime within the current statutory framework'⁶.

7. In particular we agree about the potential difficulties which may arise around what would and would not be covered by a 'gateway clause'. We support the approach set out in the consultation, namely that: 'The introduction of a gateway clause, unless very narrowly defined, would represent a significant departure from the approach originally taken in the legislation. The Scottish Government is yet to be convinced that such a significant departure would be beneficial, but we remain open to considering it further, subject to assurance that it could be capable of operating in a clear and proportionate way'⁷.

8. In particular we share the concerns of the Scottish Government about such a clause

