

Freedom of Information in the Devolved Scotland

Introduction

Freedom of Information in the Devolved Scotland was the title with which I began work on this lecture, but as is the way with these things variations or elaborations on that title came to me as I was working on it. The elaboration which came to me most recently was ‘The Best Small Country in the World? Freedom of Information in the Devolved Scotland’; which may give some clue as to the way in which my thoughts have been moving. But to go back to the beginning, at the Centre’s launch in January I said that my interest lay in the government of Scotland and the part freedom of information (Fol) plays in that process - because Fol was not conceived as an end in itself but as a means to other ends, not the least of which were changing the culture of public life and improving the government of Scotland. A logical question with which to begin therefore is where do Fol and the Scottish Information Commissioner fit into the constitutional landscape of the devolved Scotland. I keep Fol and the Commissioner separate because although the Commissioner is responsible for the promotion and enforcement of the legislation, he is only a part albeit a very important part of the overall Fol picture in the devolved Scotland.

What I want to do in the course of this lecture is to look in turn at the relationship between Fol and the SIC, on the one hand, and

government, parliament and the courts, on the other, before making some concluding remarks. If we start therefore with the government:

Government and FoI

The Scottish Government appears in two guises in relation to FoI which are reflected in its 'Six Principles of FoI', which were announced in October 2007.

a) Government as subject

First, and most obviously, the Scottish Government is subject to the legislation, which the first of the six principles states it supports 'as an essential part of open democratic government and responsible public services'. In 2008, it recorded 1,258 requests for information and issued 1,149 responses. In 2007, it recorded 779 requests and issued 431 responses. The increase is on the face of it a significant one but it is almost certainly attributable in large part to the extension of the definition of (non-routine) requests to cover any requests other than those which are received regularly and are easily dealt with, such as requests for copies of publications or for general information about the Scottish Government.

As well as being subject to an enforceable right of access to information, the Government is committed by the third of its six principles to publishing information 'proactively wherever possible'. A pilot scheme aimed at substantially increasing public access to

information was announced in May 2008, and the Government has also revised its publication scheme.

b) 'policy responsibility' for FOISA

Secondly, the Government has a policy responsibility for the Act. The second of its six principles provides that it 'operates within FOISA rather than propose (sic) significant changes to it, but adjusts the regime where it is necessary and sensible to do so'. The business of adjustment short of significant changes currently has three aspects:

i) Possible extension of coverage: Section 5 order

The first is the much debated question of the Act's coverage. In November 2008, the Government issued a 'discussion paper' seeking views on the possible designation of contractors who provide public authority services, registered social landlords, and local authority trusts or bodies set up by local authorities. The discussion paper was described, possibly somewhat disingenuously, as a 'positive' response to the concerns that have been expressed about loss of FoI rights as a result of changes in the way services are delivered. The Commissioner has responded to the discussion paper recommending that the Act should be extended to cover private contractors carrying out public functions, particularly contracts of high value and duration; contractors who build, maintain and operate private prisons; all registered social landlords, with formal consultation giving individual landlords the opportunity to argue against being included; and local authority trusts, particularly those delivering

leisure and cultural services. Lord Wallace was critical of how long it had taken to address this issue in his inaugural lecture, but it was not until I looked at the history that I realised quite how long it had been an issue. As early as 2001 officials were confident that companies involved in major PFI projects that were delivering important public services - Kilmarnock Prison Services was given as an example - would be included within the scope of the legislation. Eight years later formal consultation on their possible designation has yet to begin.

ii) Section 4 and 64 Orders

The second aspect involves the exercise of the subordinate law making powers conferred by sections 4 and 64 the Act. There have been two instruments: the Scottish Public Authorities Amendment Order 2008, which is the first order to be made under section 4(1), and which adds eleven bodies to the Schedule and removes nine (which no longer exist); and the Relaxation of Statutory Prohibitions on Disclosure of Information) (Scotland) Order 2008, which as the title indicates relaxes a number of statutory prohibitions on the disclosure of information. The latter is for the most part the 'tartan' equivalent of a UK order made four years earlier. One might ask therefore why Scotland should have had to wait four years longer than the rest of the United Kingdom for the statutory prohibitions on the disclosure of information under e.g. the Factories Act or the Medicines Act to be relaxed. If the experience of Fol tells us anything about the devolved government of Scotland it is perhaps that it is not particularly quick across the ground.

iii) Reviewing Codes of Practice issued under FOISA and EIRs

Finally, the Government is reviewing the codes of practice and guidance issued under sections 60 and 61 of the Act, and the Environmental Information (Scotland) Regulations 2004.

We might also note that the previous administration carried out a review of the Act's first year of operation with a view to identifying opportunities for 'fine-tuning' capable of being implemented through subordinate legislation or amendments to the codes of practice. No such opportunities were apparently identified.

So much for the Scottish Government: supportive of Fol as an essential part of open, democratic government and responsive public services; no doubt mindful that the sort of news generated by requests is unlikely to be flattering; and, it is my impression, not doing anything terribly quickly. What then of the Parliament?

Parliament and Fol

Whereas the Government appears in two guises, the Parliament appears in three. The first guise is that of sponsor.

a) as sponsor of the SIC

The Scottish Information Commissioner is one of a number of parliamentary 'commissioners' established in the wake of devolution, the others being the Scottish Public Services Ombudsman, the

Scottish Parliamentary Standards Commissioner, the Commissioner for Public Appointments in Scotland, the Commissioner for Children and Young People in Scotland, and the Scottish Commission for Human Rights.

The six commissioners share a number of features in common, the most important of which are a) that their appointment, re-appointment and removal from office are a matter for the Parliament and /or its Corporate Body rather than the Scottish Government; the Scottish Information Commissioner is appointed by the Queen on the nomination of the Parliament; b) they are funded by or through the Parliament rather than the Government; the Commissioner is funded by the Scottish Parliamentary Corporate Body (SPCB); c) they enjoy statutory guarantees of their operational independence from both the Parliament and the Government; the Act provides that the Commissioner 'is not subject to the direction or control of the Parliamentary corporation, of any member of the Scottish Executive or of the Parliament'; and d) they report to the Parliament rather than the Government; the Commissioner is required to lay annually before the Parliament a general report on the exercise of his functions under the Act.

The Scottish Parliamentary Corporate Body (SPCB) will feature again in the course of this lecture. A word of explanation is therefore in order. Under the Scotland Act, the Corporate Body is responsible for ensuring that the Parliament is provided with the property, staff and services required for its purposes. It also represents the Parliament in legal proceedings. It consists of the Presiding Officer and four

members of the Parliament appointed in accordance with standing orders. The four appointed members are elected by the Parliament, to represent all MSPs and not as party representatives. When the Corporate Body was first set up it was largely seen as a 'housekeeping body', but in reality, as the former Presiding Officer George Reid has explained, 'many of the issues which come before it are intensely political - taking up in the first and second Parliaments, a good 30% of the PO's time'. The Holyrood building itself to take an obvious example.

Modelling the Scottish Information Commissioner on the Auditor General for Scotland, for whose appointment provision was made in the Scotland Act, must have seemed like a terribly clever wheeze at the time. At first glance it neatly disposed of the question of the Commissioner's independence by establishing the Commissioner as a parliamentary rather than executive office-holder, although the UK government's earlier rejection of an officer 'accountable to Parliament' in favour an 'independent' officer for the UK Information Commissioner might have served as a warning that there was rather more to the question of independence than might at first appear. As an example of an officer accountable to Parliament, the UK government gave the Parliamentary Ombudsman, who not surprisingly took considerable exception to the implication that he was less than independent.

Looking back there is little doubt that the parliamentary commissioner model was less than fully thought through. The House of Commons Public Administration Select Committee, which

examined the Scottish experience in the course of its inquiry into *Ethics and Standards: the Regulation of Conduct in Public Life*, concluded that while there had been a strong focus on Commissioners' independence from the Executive, 'too little attention had been given to their 'consequential 'dependence' on the Parliament and on (sic) their accountability arrangements'.

The Parliament's growing discontent with the parliamentary commissioner model has been documented by Winetrobe. The principal expression of that discontent until recently was the Finance Committee's 2006 inquiry into the accountability and governance of the parliamentary commissioners and ombudsman, which was prompted by 'concerns about increasing costs, the perceived shortcomings of budgetary accountability, the lack of consistency in governance arrangements and other matters.' The Committee was highly critical of the existing arrangements: 'It would appear to the Committee that, whilst protecting the independence of commissioners and ombudsman within establishing legislation, insufficient checks and balances have been put in place to reassure the Parliament that commissioners and ombudsman represent value for money.' The Committee rejected the argument that closer financial scrutiny was a threat to their independence, and it demanded that the Corporate Body tighten its scrutiny of the commissioners and ombudsman. The Finance Committee's report, Winetrobe argues, provided the SPCB with much-desired cover and authority for more robust dealings with commissioners over their budgets etc.

As well as demanding a more robust approach to financial scrutiny, the Committee wanted a more sceptical approach taken to proposals for the establishment of new commissioners, including the Human Rights Commission, which in the event just made it under the wire; ‘no new officeholder should be proposed unless it can be clearly demonstrated that the function cannot be carried out by an existing body’. It also indicated that it would not be unhappy if some commissioners were to lose their ‘gold standard’ status and be reclassified as executive bodies; the Committee seems to have had the Commissioner for Children and Young People particularly in mind.

Following the Finance Committee’s Report and the subsequent Crerar review of regulation, audit, inspection and complaints handling, the SPCB is now proposing, through the Parliament’s ad hoc Review of SPCB Supported Bodies Committee, to reduce the number of commissioners to three - a complaints and standards body, a rights body, and an information body - as part of the Government’s wider drive to ‘improve the public sector landscape’ by reducing the number of ‘public sector’ bodies. Its proposals would see the Scottish Information Commissioner continue as a stand-alone body as at present.

b) as a check on government

The second guise in which the Parliament appears is as a check on government, including government in relation to Fol.

One justification for parliamentary sponsorship is that it is a logical extension of the Parliament's role in holding government to account. 'Effective openness leads to better scrutiny. Better scrutiny leads to better government....' Jim Wallace said on publication of the draft Freedom of Information Bill. The UK Parliamentary Ombudsman is the classic example. Crossman described the ombudsman as 'a servant of Parliament: an extra link in the chain of defence the citizen's got against the bureaucracy but very much in the context of the parliamentary system'; Crossman it will be recalled made his own distinctive contribution to open government (*Attorney General v Jonathan Cape*). The description was not accidental. It was intended to reassure MPs that the ombudsman did not represent a threat to their own perceived primacy in the redress of citizens' grievances against the administration, which was why access to the ombudsman was made possible only through an MP, as indeed it continues to be. But whatever doubts may have been expressed about the ombudsman device at the time, and there were many, there is little question that the relationship between Parliament and ombudsman has been mutually advantageous.

It is tempting but difficult to see the relationship between the Scottish Parliament and its commissioners in the same way. The emphasis has been very much on value for money rather than commissioners as an integral part of the Parliament's scrutiny of the executive, or, more broadly, the part they play in the overall governance of Scotland. The point was made with some force by the outgoing Scottish Parliamentary Standards Commissioner in evidence to the Review of SPCB Supported Bodies Committee:

‘Important issues are at stake. We are talking about nothing less than the good governance of Scotland. We are not talking about whether it will be easier for the Parliament to deal with three bodies rather than six. Essentially we are talking about how the Parliament can add value to the work of the office-holders and how they can add value to the work of the Parliament in ensuring that we have good public services, appropriate standards of conduct in those who hold public office and so on.’

The experience of Fol is revealing in this regard. It is not that there has been any lack of questions: a search of the Parliament’s question and answer search facility reveals 236 questions about Fol and 28 about the SIC. But there has been only one debate since the Act came into force, which was initiated by the Executive as part of its review of the Act’s first year of operation. There have been no evidence sessions, for example, on the outcome of the Executive’s review of the Act’s first year of operation, despite the Finance Committee’s endorsement of the proposal that committees take evidence more regularly from the commissioners and ombudsman. And there is nothing corresponding to the relationship between the Information Commissioner and the Justice Committee and its predecessor the Constitutional Affairs Committee at Westminster, or, and perhaps a better example, between the Parliamentary Ombudsman and the Public Administration Select Committee at Westminster; in fact no relationship between the Commissioner and the Parliament that is not mediated by the Corporate Body.

The explanation for this may be partly structural - the absence of cross cutting or thematic committees along the lines of the Public Administration Select Committee at Westminster which arguably leaves the Parliament ill-equipped to carry out its job of holding government to account. The suggestion was made to the Finance Committee of a committee similar to the New Zealand Officers of Parliament Committee to oversee the parliamentary commissioners and ombudsman on behalf of MSPs, but the Finance Committee took the view that responsibility should remain with the Corporate Body. The question of commissioner oversight apart, however, there would seem to be a clear case for the Parliament re-visiting the appropriateness of its committee structure for the purposes of the scrutiny of government. But for the moment at least this is not an issue in which the Parliament is much interested. We have a minority government and the focus is very much on what happens in the chamber rather than in committee.

None of which means that MSPs are not using FoI. One sees a steady stream of stories in the press which have been FoI assisted. The Scottish Futures Trust and the number of police officers with criminal convictions to take only two recent examples. Stories which invariably cast government in a poor light and which must inevitably diminish its enthusiasm for FoI whatever its political complexion. In his lecture Lord Wallace recounted the conversation with a former coalition colleague in which he was told how often he had been privately cursed for the FOI legislation. 'But now we're in opposition', the former minister said, 'we think it's just great.' During the pre-legislative scrutiny of the Bill, he quoted the example

of New Zealand where opposition MPs were said to be ‘pretty adept’ at using Fol.

Nor does it mean that Commissioners are not exposed to criticism. ‘Dump the failing tsars’ was apparently the headline in the Daily Express after Tom McCabe, a member of the SPCB, gave evidence to the Review Committee in December. As Winetrobe points out, ‘parliamentary-sponsored public officials live under far more direct and intensive scrutiny than their government-sponsored counterparts.

But the lack of ‘parliamentary interest’, as Lord Wallace put it, does it seem to me raise important questions about the Parliament’s assumed primacy in the scrutiny of government. Far from the Parliament being at the apex or centre of our system of scrutiny as we tend to assume, might we be looking at a much more dispersed system of scrutiny, one in which commissioners play a role but not as part of the overall machinery of parliamentary scrutiny? But if that is the case we might also ask whether the Parliament has not missed or is not missing an opportunity to strengthen its role in the scrutiny of government, including government in relation to Fol.

An alternative model, which has been suggested by some commentators, is that of commissioners as part of a fourth branch or integrity branch of government, but talk of a fourth branch of government in Scotland would seem more than a little premature at the present time (unless we treat the devolved watchdogs together with their reserved counterparts).

c) as subject

Finally, of course, the Scottish Parliament and the Corporate Body but not individual MSPs are subject to the Act. At Westminster, the relationship between the parliamentary authorities and the Information Commissioner has been tested through a series of cases involving parliamentary allowances. The Commissioner did not come under direct attack but the episode raised the question whether he might have come under greater fire had he like the Scottish Information Commissioner been sponsored by the Parliament rather than by the Government.

The SPCB's decision to publish details of MSPs' allowances and expenses seems not to have been accompanied by the degree of resistance as at Westminster. That does not mean, however, that we would be wrong not to bear in mind the possibility that commissioners may find themselves caught between a less than enthusiastic executive - in the case of Fol because as I've said it tends not to be a source of good news for government - and uncomprehending if not hostile MSPs. The future at Westminster, Gay and Winetrobe argue, could see 'a new authoritative watchdog environment' or 'a reining in of commissioners by a combination of suspicious MPs and an executive smarting from unwelcome regulation.' The Review Committee's report and the response to it will tell us whether we are already there in Scotland.

Which takes us back to the question of sponsorship and what exactly it entails because there would seem to be little point in substituting

parliamentary sponsorship for executive sponsorship if all we achieve thereby is to replace one form of dependency with another. Let me suggest three things; others will no doubt have their own ideas:

An obligation to ensure that commissioners are properly resourced. As the House of Commons Public Administration Select Committee points out, watchdogs require secure funding arrangements, beyond the sole or direct control of in the Scottish case the Parliament. A memorandum of understanding provides for written notification to the Finance Committee if the SPCB proposes changes to their budget which in the opinion of the commissioner or ombudsman could affect their ability to discharge their functions;

An obligation not to trespass on what are properly matters of commissioner concern, one aspect of which, which emerges clearly from the Finance Committee's report, is the need to ensure that their operational independence is not compromised as a result of financial scrutiny; and

An obligation to defend - or if not to defend to at least refrain from attacking. In evidence to the Review Committee, the Scottish Parliamentary Standards Commissioner argued that sponsorship includes 'taking an interest in [commissioners'] remit, protecting budgets, ensuring that there are good communications with Parliament and, when a commissioner or ombudsman is under attack, helping to rebut criticism and defend territory.'

And it is the last of these which has been most conspicuous by its absence. In evidence to the Finance Committee earlier, the Scottish Parliamentary Standards Commissioner lamented the fact that negative articles in the press were ‘seldom counterbalanced by articles by people in Parliament who can explain why Parliament thought that setting up the posts was valuable, what value they add to the governance of Scotland and why the country needs constitutional watchdogs or, indeed, why any mature democracy needs such constitutional watchdogs.’

So much for the Parliament. What, finally, of the courts?

The courts and Fol

The Act provides a two stage appeals procedure with a request to a public authority to review its original decision being followed by the possibility of an appeal to the Commissioner. Initial estimates predicted between 125 and 300 appeals to the Commissioner in the first year. In the event, the actual number was almost twice that at 571. Since then the numbers have been steadily falling. Last year there were 367 appeals (down from 482 in 2007). As the Commissioner says in his annual report this can be viewed positively, indicating that authorities may be providing information more readily or that applicants are using their rights more judiciously, but there is also a need to ensure that people are being informed of their right of appeal. It may be too of course that individuals are making less use of the legislation and with it their right of appeal to the Commissioner.

An appeal lies against a decision of the Commissioner to the Court of Session. The appeal is confined to points of law and does not extend to the merits of decisions. There have been only a small number of appeals: 27 over the first four years, 23 of which have been brought by public authorities. The principal repeat player has been the Scottish Government which has brought seven appeals, three of which have been lost and remaining four of which have been withdrawn. Of the 27 appeals, five have been decided, ten have been

withdrawn (seven by public authorities and three by applicants), eight have been conceded, and the remaining four are still to be heard. Of the five decided three have been 'won' by the Commissioner and two 'lost'.

The position under the Scottish Act may be contrasted with the position under the UK Act where an appeal, on the merits as well as a point of law, lies to the Information Tribunal, and from there on a point of law to the High Court (or Court of Session in Scotland); and where the number of appeals has been running at a much higher level. Over the same four year period there were 235 plus appeals to the Tribunal, and a dozen or more appeals to the High Court. Whereas only a small percentage of the Scottish Information Commissioner's decisions are challenged by way of appeal, the comparable figure for Information Commissioner decisions is closer to a third.

The Scottish Executive addressed the question of a right of appeal to a tribunal in the course of the development of the legislation. In the light of the responses to the initial consultation paper, it came down against a right of appeal on the grounds that it would 'add an unnecessary layer of bureaucracy and possibly undermine the Commissioner's powers', which roughly translated means I think that it would be used by public authorities to delay matters and that decisions would be less likely to stick if applicants and respondent authorities knew they could be appealed to a tribunal.

As it happens, the UK government's starting point was exactly the same. In *Your Right to Know*, the White Paper that preceded the legislation, it argued that a right of appeal would not be in the best interests of FoI applicants. 'Overseas experience shows that where appeals are allowed to the courts, a public authority which is reluctant to disclose information will often seek leave to appeal simply to delay implementation of a decision. The cost of making an appeal to the courts would also favour the public authority over the individual applicant.' What seems to have prompted a change of mind was the decision to combine the functions of the Information Commissioner with that of the Data Protection Commissioner under the Data Protection Act 1998. The Data Protection Commissioner came complete with a Data Protection Tribunal, and the Commissioner and the Tribunal were simply renamed the Information Commissioner and the Information Tribunal. Rights of appeal once granted it seems cannot be easily taken away, particularly when they are founded in Community law as is the case with the rights granted by the Data Protection Act which implements Council Directive 95/46/EC of 25 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. But because data protection is reserved that argument would have had no bearing in the devolved Scotland.

The Public Administration Select Committee acknowledged that there was some risk that recourse to the Tribunal might be used to delay disclosure of information, and that because legal aid was not available it might be difficult for many people to make a case before the Tribunal. However, adding a tribunal stage to the enforcement

system, it concluded, did provide a ‘necessary element of procedural fairness to the system.’

The key question, however, is not why is there no right of appeal to a tribunal under the Scottish Act but whether Scots are disadvantaged by the absence of this ‘necessary element of procedural fairness’.

One reason why there are so few appeals I have no doubt is because applicants are for the most part satisfied by the Commissioner’s decisions. For the Commissioner, the relatively low number of appeals ‘emphasises the importance of investment in decisions which provide full explanation of thorough investigation and deliberation on applications.’ But if there were a right of appeal to a tribunal it would be naïve to imagine that applicants would not avail themselves of it.

I initially hesitated over the answer to this question. Like the Scottish Committee of the Council on Tribunals, I did not see why Scots should enjoy fewer rights of redress in respect of devolved matters than they enjoy in respect of reserved matters or, as the Committee chose to put it, why there should not be consistency with the parallel provisions for England and Wales which are now enshrined in the UK Freedom of Information Act.’ On reflection, however, I am persuaded that in a country as small as Scotland there is greater scope for getting decisions ‘right’ first time than in the rest of the United Kingdom, which is what the Commissioner strives to do and for the most part succeeds in doing. It is better in other words to concentrate on getting front line decisions right than on the provision of elaborate appeals procedures in an effort to correct initially flawed decisions. And, we might ask ourselves, what is the ‘correct’

decision when one is deciding between competing interests as is the case with FoI? Are we not just substituting one person's conception of the public interest for another's?

The disadvantage of the current arrangements, which would remain even if there were a right of appeal to a tribunal, is that public authorities can defeat information requests by appealing on spurious points of law to the Court of Session knowing that it will take eighteen months or more to get a decision by which time the information will almost certainly have lost its currency. As we have seen, the fear was that a right of appeal to a tribunal would be used by public authorities to delay matters, but the right of appeal to the Court of Session lends itself to being used in precisely that way. In the Commissioner's Annual Report for 2007 the delay between an appeal being lodged and a hearing was described as 'frustratingly long.' The hope is that the Civil Courts Review will lead to an improvement but I am not so optimistic if only because administrative justice seems to have become the forgotten child or one of the forgotten children of the devolved Scotland. The Administrative Justice Steering Group, chaired by Lord Philip, will shortly submit its second report to the Scottish Government, on the future of tribunals in Scotland, but the Government is understood to intend to do nothing about either of its reports until it has formed a view about the Civil Courts Review. An alternative course might be to transfer the appeal to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007, from which an appeal would then lie to the Inner House of the Court of Session, but the fact that freedom of information is devolved would require an amendment to the

legislation before this could be done. In this as in other aspects of administrative justice there is a danger of Scotland being left behind.

Concluding remarks

The Scottish Fol regime is said to be one of the most successful in the world, although the difficulties of comparison might caution against such a claim. The Scottish Government, for its part, has invoked the absence of the calls for change that have been made south of the border as evidence for its claim that Fol 'is working', but I am not sure I would use that as my test of whether Fol is working or whether change is needed. Almost five years after the legislation came into force it seems to me there is a need for a closer look at 'how the legislation is working out in practice', if only to ensure that we do not fall into the all too familiar trap of assuming the automatic superiority of all things Scots or, to put it another way, that Scotland is indeed 'the best small country in the world'.

As to who might carry out that assessment, the obvious candidate is the Parliament whose role since the enactment of the legislation has been conspicuous by its absence. In the debate on the draft bill, the Convenor of the Justice Committee suggested that consideration should be given to the question whether a committee of the Parliament should be under a duty to review the Act as it was implemented. In the event no requirement for post-legislative scrutiny was included in the Act and so far as I can see no consideration was ever given to the inclusion of such a requirement. In his lecture Lord Wallace suggested that the Act was a particularly

suitable candidate for post-legislative scrutiny because of ‘the right it gives to all citizens in relation to public authorities.’ One of the benefits of devolved government or independent government for that matter it seems to me is the opportunity it brings to learn from our neighbours be they in the once fabled arc of prosperity or closer to home. The Westminster Government has now committed itself to a system of post-legislative scrutiny in which it is for departmental select committees to decide, on the basis of a memorandum submitted by the relevant government department, whether to conduct further post-legislative scrutiny of appropriate Acts. If the Westminster system were to be followed in Scotland the Scottish Government would be submitting a memorandum now (where is the Westminster government memorandum on the FOIA?) But even if it were not to there would be nothing to prevent the Parliament, which as we know is not labouring under a great legislative burden, from initiating its own review and possibly educating itself as well as us in the process.