

# Registers of Scotland

## RoS Board

8 March 2022

### Transparency Review: Board Paper Publication

#### Purpose

1. To report on a review of Board paper publication, covering papers submitted to RoS Board meetings held February 2020 to June 2021 (inclusive).

#### Recommendation

2. That the Board note the findings of the review and consider the recommendations for improvement noted in paragraphs 14 and 15.

#### Background

3. The RoS Transparency Project included a review of information published by RoS against the Model Publication Scheme set by the Office of the Scottish Information Commissioner (OSIC). This led to an action to publish papers submitted to RoS Board meetings, with a process and guidance created to support this.

4. The process allows for papers containing sensitive information to be 'taken in private', meaning the paper will not be published. In these cases, the process currently requires a valid FOISA exemption to be cited and the rationale for its application explained. Discussions around these papers during the meeting are recorded in the minutes which are published in full.

5. Publication began with papers from the February 2020 Board meeting which were published on the RoS website in June 2020. As the process has now been in place for over a year, it was felt that a review would be appropriate.

#### Board Paper Publication Review

6. For the purpose of this review, it is important to distinguish between the application of a FOISA exemption when dealing with a statutory request for information and when setting out the rationale for taking an agenda item in private. In the former, the exemption must be applied rigorously, including working through the public interest test where this applies. In the latter, the framework of exemptions is used less formally, to guide the explanation for taking an item in private.

7. For each paper taken in private, this review assessed whether the content of the paper could be considered sensitive enough to create risk if it was published, and whether the cited exemption was relevant to the subject of the paper. This assessment was then used as a basis to note any patterns or inconsistencies in how the process is operating.

8. Summary of main findings:

a. The majority of papers (72%) were published in full or with annexes removed

- b. Of the 26 papers taken entirely in private, 10 related to drafts or interim figures where the final draft or version was published
  - c. The most cited exemption was free and frank exchange of views, part of Section 30 Effective Conduct of Public Affairs
  - d. Reviewers agreed with 74% of decisions to take items in private
  - e. 6 of decisions to take items in private (annexes or full papers) were disputed
  - f. Exemptions were generally found to have been applied consistently
  - g. Exemptions were not cited in most cases where only annexes were withheld from publication
  - h. In many cases the explanation given on the cover sheet does not clearly describe why content is sensitive or where the risk lies in publication
9. Updates from Audit and Risk Committee were all taken in private. While some ARC update papers include findings from audits, or other information that could be considered sensitive, this is not always the case. Consideration could therefore be given to whether a blanket decision is appropriate for these papers.
10. The review found a small number of regular papers that will need to consistently be taken in private due to the nature of their content; these are papers relating to:
- a. Creation and review of Annual Report and Accounts (ARA) – finalised ARA will be published
  - b. Financial performance data and updates reported during the year – quarterly finance updates are published
  - c. Annexes to Risk updates which include details of risks, potential impacts and mitigating controls – security and other risks in publishing this information
11. The publication of minutes for all items, while demonstrating transparency and openness, presents the potential for inconsistency as in some cases the content of minutes and papers taken in private is very similar.
12. During the timeframe covered by this review, the Information Governance team did not receive any requests for advice or assistance in the application of exemptions.
13. Statistics on page views for published papers are summarised in Annex A. The most viewed item is the agenda for each meeting; with this exception there are no discernible trends or patterns in which papers are viewed most often.

### **Process improvements**

14. As the majority of papers are being published, it is not felt that major changes to the process or guidance are required. Minor process improvements intended to provide clarity for authors and reviewers are suggested:
- a. Amendments to the writing for publication guidance to give further clarity on exemptions and when these are applicable
  - b. Amendments to the cover sheet:
    - i. Reminder of the four-month gap between submission and publication as this may affect the sensitivity of information
    - ii. Tick boxes to allow authors to select to withhold full paper or just annexes with follow up question asking for the rationale

- iii. Explanation to include why the content is sensitive. This will help if papers are requested, eg under FOISA, and will also help with minute writing to ensure sensitive content is not included

15. Consideration could be given to moving away from using FOISA exemptions as the rationale for taking items in private, replacing this with a set of criteria based on the FOISA exemptions, but made more applicable to RoS information and processes. This would allow those papers containing sensitive information to be taken in private without reliance on knowledge of exemptions or potential inappropriate application of these.

## **Conclusion**

16. Since the process for publication was introduced, a large proportion of Board papers have been published. This demonstrates compliance with the OSIC Model Publication Scheme and our commitment to openness and transparency.

17. The review found that, in most cases, authors appropriately choose when to take items in private based on the sensitivity of the information within the paper.

18. Minor improvements are suggested which would give clarity on the process and potentially increase opportunities to publish a larger proportion of papers in the future.

**Head of Information Governance**  
**21 February 2022**

**Annex A: Statistics relating to Board paper publication****Breakdown of number of papers published by meeting**

Meeting	Papers submitted	Published in full	Published in part	Taken in private (TIP)	TIP - final draft published
Feb-2020	13	10	1	2	1
May-2020	17	14	0	3	1
Aug-2020	17	6	3	8	4
Nov-2020	12	8	1	3	0
Mar-2021	18	10	4	4	1
Jun-2021	17	7	4	6	3
<b>Totals</b>	<b>94</b>	<b>55</b>	<b>13</b>	<b>26</b>	<b>10</b>

**Exemptions cited**

Exemption	Times cited
Prejudice to effective conduct of public affairs: Free and frank provision of advice or exchange of views (S30(b))	20
Information Intended for Future Publication (S27)	11
Commercial interests and the economy: disclosure would prejudice substantially the commercial interests of any person or organisation (S33(1)(b))	5
Unclear	4

**Review of exemptions applied**

Meeting	Papers taken in private (full or part)	Decision upheld on review	Further context required*
Feb-2020	3	1	1
May-2020	3	3	0
Aug-2020	11	9	0
Nov-2020	4	3	0
Mar-2021	8	5	1
Jun-2021	10	6	2
<b>Totals</b>	<b>39</b>	<b>27</b>	<b>4</b>

*\*Where reviewers had insufficient contextual knowledge to assess sensitivity of information*

**Unique page views of published Board papers by meeting (figures to December 2021)**

Meeting	Total views	Minus agenda
Feb-2020	45	42
May-2020	24	18
Aug-2020	3	3
Nov-2020	3	0
Mar-2021	12	3
Jun-2021	44	30
<b>Total</b>	<b>131</b>	<b>96</b>