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No: 31/2021

Memorandum for Executive Council

SUBJECT **Public Access to Government Information Bill, 2021**

Memorandum by the Chairman, of the Social and Community
Development Committee

ADVICE SOUGHT

1. **Executive Council is asked to consider and advise whether the Public Access to Government Information Bill, 2021, should be printed, published and presented as Government Business at the formal meeting of the Legislative Council due to be held on 18 June 2021. A copy of the Bill is attached at Annex A.**

BACKGROUND & CONSIDERATIONS

2. The draft Bill was considered by Executive Council on 28 July 2020 when it was agreed that a number of changes should be made to the Bill. The most substantial of those changes was the addition of an independent appeals mechanism in Part 3 of the Bill.
3. Executive Council also directed that the following smaller changes be made to the Bill: -
 - (a) Clause 4(1) be changed to allow:-
 - Applications from those over 17 years of age, rather than those over 18 years
 - Those with St Helenian status to apply without being on St Helena;
 - (b) Clause 6(4) be changed to include a deadline of 20 days for applicants to respond to requests for further information;
 - (c) Clause 11(1) be changed to require SHG to not just record the number and type of requests but also to publish these details. However, the Information Officer would be able to decide whether or not to publish the actual content of the request.
 - (d) To amend clause 8(3)(a) to allow for the refusal of cumulative requests amounting to more than eight hours.
4. Executive Council further directed that once the Amended Bill was complete it should be made available for public

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comment for a period of two weeks.

The Independent Appeals Mechanism

5. A new clause 11 has been added to Part 3 of the Bill providing for an independent appeals mechanism. These provisions have been drafted by the AG's Chambers working with the Chief Magistrate.
6. The new provisions allow applicants to appeal to the Chief Magistrate if dissatisfied with the outcome of an internal review under clause 10. The provisions give the Chief Magistrate the power to require information to be given to him by the Information Officer if required for the determination of the appeal. If the Chief Magistrate upholds an appeal he has the power to serve an enforcement notice on the Information Officer requiring them to take required steps specified in the notice.
7. It is worth noting that failure of the Information Officer to comply with an information or enforcement notice can be dealt with the Chief Magistrate as if it was a Contempt of Court.
8. There are no further statutory appeals from the decision of the Chief Magistrate but the decision can be subject of judicial review. There is a provision included to stop information having to be provided pending the outcome of a judicial review.
9. The new clause also includes a provision that allows Governor in Council, following an enforcement notice, to issue a certificate that they have formed the opinion the information is exempt under 4(2). Such a certificate means an enforcement notice ceases to have effect. If this takes place the Chief Secretary must as soon as practical lay a certificate before Legislative Council. This is a mechanism akin to the ministerial veto power in the UK Freedom of Information Act. This is a power that has been used sparingly in the UK.

Other changes to the Bill

10. All the changes previously requested by Executive Council have been made. There have also been some minor technical changes to the Bill.

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Public Comment

11. The revised draft Bill was published on the SHG Website on 6 May 2021 with the opportunity for people to submit comments by 21 May 2021.
12. A press release was also issued on 6 May 2021 and published in local newspapers and aired over the radio stations. The Chair of SCDC also informed the public about the Bill on the radio.
13. Comments were received from one person and a response will be sent to them.

FINANCIAL IMPLICATIONS

14. As stated in the ExCo memo 53/2020, applications for information can already be made under the Code. Putting the Code on a statutory basis should therefore not have substantial new financial implications. However, the addition of an appeal mechanism will also come at some cost as the Chief Magistrate will spend time on the applications. Providing a statutory basis for applications may also lead to more applications being made.
15. The proposed near full cost recovery from the applicant, for staff time, should though reduce the current financial costs in responding to applications – section 9 of the Bill refers.

ECONOMIC IMPLICATIONS

16. No direct new economic implications

CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

17. N/A

PUBLIC/SOCIAL IMPACT

18. There is likely to be a positive public/social impact as the Bill encourages and allows access to Government information where relevant.

ENVIRONMENTAL IMPACT

19. There is no environmental impact.

PREVIOUS CONSULTATION/ COMMITTEE INPUT

20. The Bill was drafted following a request from Executive Council and the original version of the Bill was approved by SCDC on 23 June 2020 for submission to the Executive Council. As stated in paragraph 2 above, Executive Council approved the Bill on 28 July 2020 subject to amendments

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and being made available once updated for public comment.

21. The updated appeal provisions were presented to SCDC on 12 May 2021.

22. The Bill was available for public comment between 7 and 21 May 2021.

PUBLIC REACTION

23. A positive public reaction is expected as the Bill puts access to Government information onto a statutory basis.

PUBLICITY

24. Publicity should be undertaken via the normal media briefing following the meeting of Executive Council. The Bill, if approved, should be published 10 working days before the meeting of the Legislative Council due to be held on 18 June 2021.

SUPPORT TO STRATEGIC OBJECTIVES

25. The Bill supports the 'Effective, efficient and accountable public sector' goal and Strategic Objective 6.1 Ensure effective governance through efficient and effective systems and processes.

LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS

26. N/A

IMPLEMENTATION OF POLICY/ LEGISLATION

27. The current Public Access to SHG Information Code of Practice is managed by Central Support Service and it is anticipated that implementation and responsibility for compliance with the proposed Ordinance, will continue to rest with the Central Support Service.

AAG

OPEN/CLOSED AGENDA ITEM

28. This paper is recommended for the Open Session.

Central Support
Service

27th May 2021

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