

# The Campaign for Freedom of Information in Scotland submission of 10 April 2023

## PE1975/P: Reform the law relating to Strategic Lawsuits Against Public Participation (SLAPPs)

### Introduction

CFoIS supports petition PE1975 to reform the law in Scotland relating to strategic lawsuits against public participation (SLAPPs)<sup>1</sup>, given the evidence which warrants an integrated four nation approach<sup>2</sup>. SLAPPs prevent the disclosure of public interest information and analysis.

Anti-SLAPP legalisation should be part of Scotland's architecture on transparency, accountability and scrutiny along with FoI and human rights law. Each of these rights and duties must fit with the increasing role of the private and third sectors in the delivery of public services. Parliament can act to enable independent scrutiny of business dealings, contract performance and outcomes.

CFoIS is a member of the **UK anti-SLAPP Coalition and commends its UK Model Anti-SLAPP Law<sup>3</sup>, tailored to Scotland. A Scottish law can also draw on** the work of the Council of Europe's Committee of Experts on SLAPPs.<sup>4</sup>

### FoISA Reform

Reforming the Freedom of Information (Scotland) Act 2002 (FoISA) is urgent. CFoIS supports Katy Clark MSP's approach to reform FoISA<sup>5</sup>, rooted in the CFoIS 'FoISA Reform Bill'<sup>6</sup>, which extends rights and duties to fit all public service providers and strengthens enforcement powers. The PAPLS Committee's Inquiry Report, published in May 2020, recommended legal reform<sup>7</sup> too.

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1 [PE1975 Reform the law relating to Strategic Lawsuits Against Public Participation SLAPPs | Scottish Parliament Website](#)

2 ['London Calling': The issue of legal intimidation and SLAPPs against media emanating from the United Kingdom - The Foreign Policy Centre \(fpc.org.uk\) and The Coalition against SLAPPs in Europe \(the-case.eu\)](#)

3 [Model UK Anti-SLAPP law \(nuj.org.uk\)](#)

4 [MSI-SLP Committee of Experts on Strategic Lawsuits against Public Participation - Freedom of Expression \(coe.int\)](#) 'Discussion of the draft Recommendation on SLAPPs' - 3rd meeting of the Committee of Experts on SLAPPs at the Council of Europe 18-19<sup>th</sup> April 2023.

5 [consultation issued by Katy Clark MSP](#)

6 [2022 – CFoIS](#)

7 [Post-legislative Scrutiny : Freedom of Information \(Scotland\) Act 2002 - Parliamentary Business : Scottish Parliament](#)

## **Business and Human Rights**

The UN's 31 Guiding Principles on Business & Human Rights (UNGPs) prompted the UK to adopt a voluntary 'National Action Plan on Business and Human Rights' (NAP), in 2013<sup>8</sup>. There is no Scottish version despite a baseline assessment<sup>9</sup> and a Scottish Government commitment that it "will form the basis for a participative process to develop a national action plan in Scotland..."<sup>10</sup> In March 2023, Scotland's second National Action Plan on Human Rights (SNAP 2) was published which recognised this outstanding action from SNAP 1, and said "*If Scotland continues with developing a Business and Human Rights Action Plan, it is important that this is coordinated with SNAP as the national human rights action plan.*"<sup>11</sup>

The UN Committee on Economic, Social and Cultural Rights in its 'List of Issues' on the UK published on 23<sup>rd</sup> March 2023 seeks information on the results achieved in implementing the updated NAP (2016), is requesting information on "compliance mechanisms and means of enforcement"<sup>12</sup> and "measures taken to reduce tax avoidance and illicit financial flows and to ensure transparency in all jurisdictions of the State party serving as major financial centres"<sup>13</sup>.

Established concerns led to the UK Government introducing a "package of transparency and anti-corruption measures to address the abuse of Scottish Limited Partnerships that has been linked to money laundering."<sup>14</sup> However it is not clear what impact this has made<sup>15</sup>. Delivery of the UNGPs through the new Human Rights Bill for Scotland, promised in May 2021<sup>16</sup>, is an option.

## **SDGs**

The UN's Sustainable Development Goals (SDGs) provide an integrated framework for making the UK, and Scotland, fairer and more

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8 At [UK National Action Plan on implementing the UN Guiding Principles on Business and Human Rights: progress update, May 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-national-action-plan-on-implementing-the-un-guiding-principles-on-business-and-human-rights-progress-update-may-2020)

9 Advertised in May 2015 at [National Baseline Assessment on Business and Human Rights \(government-online.net\)](https://www.gov.uk/government/news/national-baseline-assessment-on-business-and-human-rights) and progress at [Business and Human Rights – Scotland's National Action Plan for Human Rights \(snaprights.info\)](https://www.gov.scot/national-action-plan-for-human-rights)

10 [Business and Human Rights – Scotland's National Action Plan for Human Rights \(snaprights.info\)](https://www.gov.scot/national-action-plan-for-human-rights) and [Human rights and business - Human rights - gov.scot \(www.gov.scot\)](https://www.gov.scot/human-rights-and-business)

11 Pg 42 [Scotland's second National Human Rights Action Plan – SNAP 2 \(snaprights.info\)](https://www.gov.scot/national-action-plan-for-human-rights)

12 Available on CFoIS website at [CFoIS – The Campaign for Freedom of Information in Scotland](https://www.cfois.org.uk/cfois-the-campaign-for-freedom-of-information-in-scotland)

13 Para 8(h) Ibid.

14 [New measures to tackle international money laundering - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/new-measures-to-tackle-international-money-laundering)

15 The ICESCR Committee has issued General Comment No. 24 (2017) on State obligations in the context of business activities which emphasises the importance of an explicit regulatory regime.

16 [New Human Rights Bill - gov.scot \(www.gov.scot\)](https://www.gov.scot/national-action-plan-for-human-rights) pub 12<sup>th</sup> March 2021.

accountable on public procurement and on transparency<sup>17</sup>. Anti-SLAPP legislation helps the SDGs to fulfil their purpose.

### **Conclusion**

A strategic approach to delivering transparency, accountability and scrutiny requires anti-SLAPP legalisation, enforcement of the UNGPs, SDGs plus reforming FoISA<sup>18</sup>.

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17 See 4, 5 and 6 and 8, 15(b) and 31(e)

18 [Human rights - gov.scot \(www.gov.scot\)](http://www.gov.scot)