

EMAIL SENT TO COVID-19 COMMITTEE AND MICHAEL RUSSELL MSP

To: Scottish Parliament COVID-19 Committee and members, and Mr Michael Russell MSP (via Scottish Ministers inbox)

From: Daren Fitzhenry, Scottish Information Commissioner

Date: 14 May 2020

SUBJECT: **Technical note re FOI and Coronavirus (Scotland) (No. 2) Bill**

Dear Committee members / Minister,

During Stage 1 debate of the Coronavirus (Scotland) (No.2) Bill in the Scottish Parliament, reference was made to amendments which may be laid regarding changes to the Freedom of Information (Scotland) Act (2002) (FOISA) made by Schedule 6, Part 2 of the Coronavirus (Scotland) Act (2020) (the Coronavirus Act). Particular reference was made to the changes to maximum timescales in which authorities must respond to requests for information or review (increased from 20 working days to 60 by the Coronavirus Act).

In the light of those references, I hope this short technical note, which I am sending to the Committee and to Mr Michael Russell MSP as the Minister who introduced the Bill, will be helpful in the consideration of this issue.

In order to ensure that the impact of any changes which may be made to the law are clear, not only for me as a regulator, but crucially for those making requests for information and the authorities which must respond to those requests, I would ask that consideration be given to the creation of clear transitional provisions. These would clarify when any changes come into effect, the impact on requests made after the initial changes made by the Coronavirus Act came into effect, and upon requests pending at the time any fresh changes come into effect. They could also provide for transition back to the original timescales at the end of any emergency period. This will ensure all those who have requested information during this period, or authorities who have received requests, can be clear on the impact of the law.

I make no further comment on the content of the Coronavirus (Scotland) (No.2) Bill or amendments laid to it at this stage, beyond the general points made on changes to FOISA in the [briefing circulated to MSPs on 31 March 2020](#) regarding the Coronavirus Act, and my subsequent guidance on the current emergency legislation contained in my website's [Covid-19 and FOI: Information Hub](#) – but, as you would expect, stand ready to enforce and promote FOI law in whatever way the Scottish Parliament decides.

However, if I can provide any further information as you consider the Bill, please do not hesitate to contact me.

Yours faithfully,

Daren Fitzhenry

Scottish Information Commissioner