

<b>Report to:</b>	MSMTM
<b>Report by:</b>	Helen Gardner-Swift, Head of Corporate Services (HOCS)
<b>Meeting Date:</b>	27 May 2020 (decision by telephone conference)
<b>Subject/ Title:</b>	Review of the temporary closure of office premises due to the COVID-19 pandemic VC133074
<b>Background papers (not attached)</b>	Committee Reports COVID-19 – Temporary Office Closure – 11 May 2020 COVID -19 - Temporary Office Closure - 23 April 2020

## Purpose of report

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1. To consider and approve a further temporary closure of the office premises in the light of the COVID-19 pandemic and a number of related recommendations.

## Recommendation and actions

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2. I recommend that
  - taking into consideration the matters set out in paragraphs 11- 21 (inclusive) below, the office premises should remain temporarily closed due to the COVID-19 pandemic until 26 June 2020
  - whilst the office premises are temporarily closed due to the COVID-19 pandemic the current remote working and on call arrangements continue, the expanded remote working as set out in paragraph 10 below be put in place and the related actions for the Commissioner, the SMT and the HOCS set out in paragraph 10 be undertaken
  - the SMT monitor the progression through the Phases set out in “Scotland’s route map through and out of the crisis” and any related guidance which is published and/or updated and review the temporary closure of the office premises due to the COVID-19 pandemic by 20 June 2020 or earlier, if necessary
  - as soon as the Scottish government states that we are in Phase 1, the HOCS and the Finance and Administration manager (FAM) will undertake the preparatory work on the physical distancing and hygiene measures that will need to be put in place subject to the relevant additional guidance on these measures being in place
  - our stakeholders and the public are notified of the continued temporary closure of the office premises due to the COVID-19 pandemic
  - the publication arrangements concerning this report, as set out in paragraph 37 are agreed.

## Executive summary

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### Background

3. On 11 May 2020, the SMT reviewed the temporary closure of the office premises due to the COVID-19 pandemic and agreed that the office premises should remain closed until 29 May

2020, with a further review to take place by 22 May 2020. The Committee Reports (CR), referred to in the Background papers, set out the matters considered and the recommendations which were agreed on 11 May and 23 April 2020. On 22 May 2020, the SMT agreed that the next formal review would take place as part of the Monthly Senior Management Team Meeting (MSMTM) on 27 May 2020.

### Remote Working – work undertaken to date

4. As a result of the temporary closure of the office premises due to the COVID-19 pandemic, there have been changes in the services we are able to provide, details of which been posted on our website. Set out below is a summary of the recent work we have been undertaking whilst the office premises are temporarily closed and we are working remotely.
5. The Scottish Parliament has passed the Coronavirus (Scotland) (No.2) Bill and, although the original Bill did not include provisions impacting on FOISA, the final Bill made several significant changes to those made earlier in the year by the Coronavirus (Scotland) Act 2020. These include returning the timescale for responses from 60 to 20 working days, and changes to the Commissioner's ability to use discretion when determining if an authority has complied with FOISA. The ability to issue decisions electronically is retained. The Bill is expected to receive Royal Assent this week and will come into effect the following day. An activity plan has been prepared by the Head of Policy and Information (HOPI) and work is underway to ensure that relevant guidance and parts of the [Covid-19 and FOI infohub](#) are updated to reflect the changes and, also, to ensure we communicate the changes with authorities, applicants and other stakeholders appropriately.
6. The Scottish Parliament's Public Audit and Post-Legislative Scrutiny Committee published the report on its review of FOISA which recognises that FOISA has improved the transparency and accountability of public bodies and makes a total of 39 recommendations which the committee says are required for the legislation to keep pace with the changing nature of public service delivery, new forms of communication and the way in which the public accesses information. The full report is published on [our website](#) and work to consider the implications of the report, and how it will impact on our own work, will commence shortly.
7. As at 22 May 2020, the range of key activity we have kept running as much as possible has included:
  - **Enquiries received:** dealing with 42 enquiries since the beginning of May 2020 (121 in total since 23 March 2020)
  - **Applications:** receiving 41 applications since 23 March 2020
  - **Decisions:** issuing our first eight decisions by email. The decisions have not, as yet, been published on our website as we are working on the relevant procedures and processes for doing this but we hope to be able to publish these in the next couple of weeks
  - **Office lease:** agreeing the extension of the lease for the office premises - the final legal formalities should be completed in the next few weeks
  - **Corporate Services:** the following continue to be dealt with as far as possible, and as required: payroll, budgets, finance, governance, data protection, IT, cyber security, health and safety, human resources, contracts, statutory reporting, information management, risk management and liaison with our auditors, the AAB and the SPCB.

### Expansion of remote working

8. We have twenty seven members of staff, excluding the Commissioner, the majority of which work full time. For historical reasons related to our management, working systems and security, there have been limited remote working facilities. As the SMT have activated temporary business continuity arrangements due to the impact of COVID-19 pandemic, we have had to utilise the limited remote working facilities that were in place on Monday 23 March 2020. At present, and in addition to the Commissioner, there are 8 members of staff who can work remotely (at home) using laptops/mobile phones (with full access to all of our office systems) and 3 members of staff who can carry out limited remote working using mobile phones.
9. It is likely that when the office is re-opened (subject to Scottish government guidance, the relevant physical distancing and hygiene requirements and health and safety requirements) there will still need to be some remote working (on a temporary or permanent basis) that will need to take place. Also, in the event that the office premises have to close again temporarily in the future (due to the COVID-19 pandemic or for some other reason), there needs to be sufficient remote working capacity, with access to our office systems, in place to enable the Commissioner's office to function as much as is reasonably possible.
10. As it seemed likely that the temporary closure of the office premises due to the COVID19 pandemic would extend beyond 18 May 2020, I undertook to look at how our remote working capacity could be increased. In the light of the continued closure of our office premises and, also, considering that it is likely that additional remote working may be required when office premises are open, on 18 May 2020 the SMT agreed with my proposals that:
  - (a) the remote working capacity (subject to relevant testing and other relevant matters, etc) should be increased as follows:
    - 8 additional members of staff to be supplied with laptops and mobile phones to be able to work remotely
    - the remote working in each team to be increased as follows:
      - Enforcement – 5 members of staff
      - Policy and Information – 2 members of staff
      - Corporate Services – 1 member of staff
    - an additional member of staff in the Policy and Information team will also be provided with a mobile phone and email access
  - (b) in order to also enhance business continuity resilience and ensure that our policies and procedures on case management, records management and information security are adhered to, and subject to the testing being successful, remote access to the office systems also be provided for all staff working remotely who are using a laptop provided by the office and CST to prepare guidance for staff on how to use this system.
  - (c) the HOCS consider the additional interim policies that may be needed to cover remote working and remote access to our office systems and make further recommendations to the SMT, as required
  - (d) the HOCS keep under review the need for a DPIA if remote working extended further or if remote working becomes a permanent arrangement as a result of Scottish government guidance and/or health and safety, physical distancing and hygiene social requirements (once the office premises are re-opened)

- (e) the HOCS (with the assistance of the Corporate Services Team (CST)) to explore the following and make recommendations to the SMT:
- additional teleconference facilities enabling more than one teleconference (using the current system) to happen at the same time
  - additional web-based multi-person audio calls services
  - additional multi-person video calls services the potential for a voice over IP technologies system (VoIP phone system) which could allow staff to have calls come to them wherever they are logged in - via laptop when working from home, or phone when at desk in the office premises
  - following liaison with the HOPI and the Head of Enforcement (HOE), how the Enquiries service should be managed in light of revised working arrangements, including remote working
- (f) the HOCS to review the resource required to provide internal IT support and make appropriate recommendations to the SMT
- (g) whilst the office premises are temporarily closed due to the COVID-19 pandemic, all remote working arrangements should be kept under regular review by the SMT, initially every 4 weeks and then every 8 weeks
- (h) whilst the office premises are temporarily closed due to the COVID-19 pandemic, all remote access arrangements to our office systems should be kept under regular review by the SMT, initially every 8 weeks and then every 12 weeks
- (i) any remote working arrangements that continue to be needed once the office premises are re-opened should be reviewed by the SMT initially every 8 weeks and after that every 12 weeks
- (j) that as the expenditure required to increase remote working capacity was not included in our budget proposals for 2020-21 (although there was expenditure approved for replacement PCs, tablets and a laptop which can be used towards the costs of the additional laptops and mobile phones and, also, at this stage in the financial year, we are able to plan to meet additional expenditure from existing resources), the Commissioner and the HOCS should inform the Scottish Parliamentary Corporate Body (SPCB) of the expansion of remote working that is taking place and, also, seek the SPCB's views on whether remote working can be additionally expanded to mitigate further the impact of COVID-19 on our business continuity arrangements
- (k) the HOCS consider the options regarding the further expansion of remote working following the latest expansion (carrying out the relevant tests, etc) and discussion with the SPCB and make recommendations to the SMT

### **Review of closure of the office premises due to the COVID-19 pandemic**

#### *Government guidance*

11. The government guidance that was considered in reviewing the temporary closure of the office premises on 11 May 2020 and 23 April 2020 is set out in the CRs referred to in the Background Papers.
12. As our office is located in Scotland, the SMT has been taking into consideration the advice and guidance from the Scottish government and using this as the basis for determining whether the office premises should be open or be temporarily closed. Our office has not

been specifically required to close by the Scottish government nor has the Commissioner been identified as falling within one of the designated Critical National Infrastructures which can remain open.

13. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 came into force on 26 March 2020 and the Scottish government last reviewed these temporary regulations on 7 May 2020. As at today, these regulations remain in place with no changes relating to the closure/opening of businesses. The next review is due to take place by 28 May 2020, at the latest. The related guidance to businesses has also not changed, including the 2 key questions that businesses that are not being specifically required to close should consider if work at the business premises is to take place, and businesses should continue to adopt a precautionary basis.
14. On 11 May 2020, the Scottish government published “COVID-19: A Framework for Decision Making” and supporting documentation. This sets out the approach and the principles that will guide the Scottish government, the different factors that will need to be considered and the assessment framework which will be used to take decisions in relation to the easing of the lockdown.
15. On 21 May 2020, the Scottish government published “Scotland’s route map through and out of the crisis” which takes an evidence-led and transparent approach to easing restrictions and sets out a phased approach towards the future. The route map provides an indication of the order in which the Scottish government will carefully and gradually seek to lift current restrictions, but does not attempt to specify dates for all of the different phases. Rather, as Scotland moves beyond the first phase, future phases will be based on meeting particular criteria, including those set by the World Health Organisation (WHO). In the guidance, the Scottish government states that it will continue to take a cautious approach that ensures that the virus remains suppressed, while seeking to restore as much normality as possible when it is safe to do so and it will continue to hold reviews every three weeks as a minimum, to ensure it is on track and to assess whether elements within each phase can be accelerated or decelerated.
16. In “Scotland’s route map through and out of the crisis”, the Annex provides a table setting out five phases ranging from Lockdown to Phase 4 – when the virus ceases to be a significant issue, though the need for some physical distancing and hygiene measures may remain for some time. The phases contain practical examples of what people, organisations and businesses can expect to see change over time. They also show some of the things that will not change for some time to come, such as the need for enhanced public health measures. The examples provide broad descriptions or examples of the types of changes that the Scottish government will make and it is explained that these will be refined and augmented over time, including through additional guidance for people and sectors. The guidance also sets out the conditionality and criteria for moving between phases. We are currently in the Lockdown phase but it is hoped that progress to Phase 1 will happen from 28 May 2020.
17. As regards office working and each phase the guidance states:
  - **Lockdown**
    - closure of non-essential workplaces
    - social distancing requirements for essential businesses
    - remote working is the default position

- **Phase 1** - as with previous phase but with the following changes:
  - remote working remains the default position for those who can
  - for those workplaces that are reopening, employers should encourage staggered start times and flexible working
  - workplaces resuming in later phases can undertake preparatory work on physical distancing and hygiene measures
- **Phase 2** - as with previous phase but with the following changes:
  - remote working remains the default position for those who can.
  - non-essential **indoor non-office-based** workplaces resume once relevant guidance agreed – including factories & warehouses, lab & research facilities – to re-open with physical distancing.
  - construction sector to implement remaining stages of phased return.
  - relaxation of restrictions on housing moves.
- **Phase 3** - as with previous phase but with the following changes:
  - remote working remains the default position for those who can.
  - non-essential **indoor office** workplaces can open, once relevant guidance agreed, including contact centres with physical distancing.
- **Phase 4** - as with previous phase but with the following changes
  - remote and flexible working remains encouraged.
  - all workplaces open with improved hygiene and in line with public health advice

18. Based on the above phasing and current Scottish government guidance, we will not be able to consider re- opening our office premises until Phase 3, although any preparatory work on re-opening can begin in Phase 1 (subject also to the relevant guidance being in place). In any event, given the expansion of remote working we do not anticipate the general re-opening of the office premises until Phase 3. There is no estimated timescale for when Phase 3 might happen.

### **Health and safety, physical distancing and hygiene measures**

19. Myself and the FAM are in contact with our health and safety adviser to discuss the possible arrangements that will need to be in place to enable the office to re-open, at the appropriate time, and to consider how any new health and safety arrangements will work with our current health and safety policy and procedures.
20. We will need time to plan and to prepare our workplace to ensure the required physical distancing and hygiene measures, processes, supply chains and logistics are in place and in order to introduce any changes safely and effectively. However, until further guidance is issued by the Scottish government to businesses on how to operate in the light of the required changes only initial and preparatory work can be undertaken.

21. It is likely that our steps towards opening the office premises will need to be careful, gradual and incremental as we adapt to a new way of working. We will also need to undertake the relevant risk assessments and consult staff at the appropriate time.

### Continuance of temporary closure

22. Taking into consideration the temporary regulations that are in place and the current Scottish government guidance, and the fact we are unlikely to reach Phase 3 within the next 4 weeks, my advice and recommendation is that the office premises should remain temporarily closed due to the COVID-19 pandemic until 26 June 2020.
23. In addition, I recommend that:
- the current remote working and on call working arrangements continue in place, and the new expanded remote working arrangements are put in place, whilst the office premises are temporarily closed due the COVID-19 pandemic
  - the SMT monitor the progression through the Phases set out in “Scotland’s route map through and out of the crisis” and review the temporary closure of the office premises due to the COVID-19 pandemic by 19 June 2020 or earlier, if necessary
  - as soon as the Scottish government states that we are in Phase 1, and subject to the relevant additional guidance on these measures being in place, myself and the FAM will undertake the preparatory work on physical distancing and hygiene measures that will need to be put in place and, as soon as possible, submit recommendations to the SMT for consideration.

### Risk impact

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24. The Commissioner is the regulator of FOI in Scotland and has functions and duties to fulfil.
25. As an employer, with 27 members of staff, the Commissioner is responsible for their health and safety when they are working on his behalf. The Commissioner must also comply with the Scottish government temporary regulations and guidance relating to businesses and physical distancing and hygiene. Employees also have health and safety responsibilities when they are working on behalf of the Commissioner.
26. Business continuity procedures are in place, as far as possible, however, the COVID-19 pandemic is impacting our work, is presenting us with significant resourcing challenges and, also, potentially affecting our reputation as a regulator. The temporary closure of the office premises due to the COVID-19 pandemic and the current remote working arrangements, are helping us to ensure that we can continue to offer some of the services that we would normally do but also ensure that we are safeguarding the health and safety of our staff.
27. The expanded remote working arrangements will enable us to undertake additional work and offer increased services mitigating further a number of strategic and operational risks.

### Equalities impact

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28. There is no direct equalities impact arising from this report.

### Privacy impact

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29. There is no direct privacy impact arising from this report. We have strict protocols and procedures in place to ensure we continue to comply with data protection laws.

### Resources impact

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30. Business continuity procedures are in place, as far as is possible, however, the COVID-19 pandemic is impacting our work and is presenting us with resourcing challenges. The temporary office closure and the remote working or on call arrangements help us to manage the resources that we have in place, as efficiently and effectively as possible.
31. By expanding the remote working capacity:
- 8 additional members of staff will be able to work remotely (in addition to the Commissioner, this means we will have 16 members of staff working remotely using laptops)
  - remote access to our office systems will be available to all members of staff working remotely using laptops.
32. However, there will increased resource required in managing members of staff remotely and in providing IT support.

### Operational/ strategic plan impact

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33. Each year the Commissioner publishes an operational plan setting out the organisation's planned activities, timetable for delivery and how each activity supports the Commissioner's vision and strategic aims. Targets and key performance indicators are also set.
34. The temporary closure of the office premises due to the COVID-19 pandemic and the limitation of our services will impact the strategic plan objectives, the operational plan, our targets and key performance indicators.

### Records management impact (including any key documents actions)

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35. This report and the related minute will be published on our website.

### Consultation and Communication

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36. Publication of the MSMTM minute and this report.

### Publication

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37. I recommend that this committee report is published in full.