

Annex A

Document 1

From: [redacted]

Sent: 13 November 2020 15:16

To: [redacted]; Cameron DA (Donald) (Constitution and UKR)

<Donald.Cameron@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)

<David.Rogers@gov.scot>; [redacted]; Curtis PS (Penelope)

<Penelope.Curtis@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Cc: [redacted]

Subject: S5O - 04773 - Draft Answer & Background Note

Importance: High

Dear Colleagues,

Mr Russell has Portfolio Questions in Parliament next week. Question 5 asks:

5. Murdo Fraser: To ask the Scottish Government on what basis the constitution secretary stated that an independence referendum would take place in 2021. ([S5O-04773](#))

I have agreed the attached draft answer and background note with [redacted], if you have any comments, I would be grateful if you could let me know before 4pm on Monday 16 November please.

[redacted]

Attachment to Document 1

Q: To ask the Scottish Government on what basis the constitution secretary stated that an independence referendum would take place in 2021 (S5O-04773).

A: [redacted]

TOP LINES ON A DRAFT INDEPENDENCE REFERENDUM BILL

:

- Due to the coronavirus crisis, it is clearly not possible to organise and hold an independence referendum that is beyond legal challenge before the end of the current Parliamentary term next year.
- The Scottish Government now plans to publish, before the end of this Parliament, a draft bill for an independence referendum – setting out the terms of a future referendum clearly and unambiguously to the people of Scotland.
- The draft bill will set out the question to be asked, subject to appropriate testing by the Electoral Commission, and the timescale in which, within the next term of Parliament, we consider the referendum should be held.
- Timing of an independence referendum will take account of the development of the COVID-19 pandemic at the time of publication of the draft bill, and will ensure the flexibilities to respond to any further restrictions caused by it.
- If there is majority support for the bill in the Scottish Parliament in the next term, there could then be no moral or democratic justification whatsoever for any UK government to ignore the rights of the people of Scotland to choose our own future.
- Other work to prepare for an independence referendum has been paused for the time being as the Scottish Government is focused on responding to the current COVID-19 pandemic and we will return to the issue when it is appropriate to do so.

Document 2

From: [redacted]

Sent: 16 November 2020 14:53

To: Cabinet Secretary for Constitution, Europe and External Affairs

<CabSecCEAEA@gov.scot>

Cc: [redacted]; [redacted]; Cameron DA (Donald) (Constitution and UKR)

<Donald.Cameron@gov.scot>; Rogers D (David) (Constitution and Cabinet Director)

<David.Rogers@gov.scot>; [redacted]; Curtis PS (Penelope)

<Penelope.Curtis@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Subject: S5O - 04773 - Draft Answer & Background Note

Importance: High

PS/Cabinet Secretary,

Please find attached our suggested draft Answer and Background Note for number 5 of Mr Russell's Portfolio Questions this week.

[redacted]

Attachment to Document 2

Q: To ask the Scottish Government on what basis the constitution secretary stated that an independence referendum would take place in 2021 (S5O-04773).

A: [redacted]

TOP LINES ON A DRAFT INDEPENDENCE REFERENDUM BILL

- Due to the coronavirus crisis, it is clearly not possible to organise and hold an independence referendum that is beyond legal challenge before the end of the current Parliamentary term next year.
- The Scottish Government now plans to publish, before the end of this Parliament, a draft bill for an independence referendum – setting out the terms of a future referendum clearly and unambiguously to the people of Scotland.
- The draft bill will set out the question to be asked, subject to appropriate testing by the Electoral Commission, and the timescale in which, within the next term of Parliament, we consider the referendum should be held.
- Timing of an independence referendum will take account of the development of the COVID-19 pandemic at the time of publication of the draft bill, and will ensure the flexibilities to respond to any further restrictions caused by it.
- If there is majority support for the bill in the Scottish Parliament in the next term, there could then be no moral or democratic justification whatsoever for any UK government to ignore the rights of the people of Scotland to choose our own future.
- Other work to prepare for an independence referendum has been paused for the time being as the Scottish Government is focused on responding to the current COVID-19 pandemic and we will return to the issue when it is appropriate to do so.

Document 3

An extract is below. The rest of the document is not within the scope of your request so has been removed.

- The Scottish Government now plans to publish, before the end of this Parliament, a draft bill for an independence referendum – setting out the terms of a future referendum clearly and unambiguously to the people of Scotland.
- The draft bill will set out the question to be asked, subject to appropriate testing by the Electoral Commission, and the timescale in which, within the next term of Parliament, we consider the referendum should be held.
- Timing of an independence referendum will take account of the development of the COVID-19 pandemic at the time of publication of the draft bill, and will ensure the flexibilities to respond to any further restrictions caused by it.
- If there is majority support for the bill in the Scottish Parliament in the next term, there could then be no moral or democratic justification whatsoever for any UK government to ignore the rights of the people of Scotland to choose our own future.
- Other work to prepare for an independence referendum has been paused for the time being as the Scottish Government is focused on responding to the current COVID-19 pandemic and we will return to the issue when it is appropriate to do so.

Section 38(1)(b) - personal information

An exemption under section s.38(1)(b) of FOISA applies to some of the information you have requested because it is the personal data of a third party, i.e. names and contact details of individuals, and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018.

This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

Section 30(b)(i) (free and frank provision of advice)

An exemption under section 30(b)(i) of FOISA (free and frank provision of advice) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption recognises the need for officials to have a private space within which to provide free and frank advice to Ministers before the Scottish Government reaches a settled public view.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can provide full and frank advice to Ministers, as part of the process of exploring and refining the Government's policy position. This private thinking space is essential to enable all options to be properly considered, based on the best available advice, so that good policy decisions can be taken. Premature disclosure is likely to undermine the full and frank discussion of issues between Ministers and officials, which in turn will undermine the quality of the policy making process, which would not be in the public interest.