From: [redacted s38(1)(b)]@gov.scot>
Sent: 31 March 2020 18:22
To: [redacted s38(1)(b)]@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: Hynd JS (James) <James.Hynd@gov.scot>; [redacted s38(1)(b)]@gov.scot>;[redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [redacted s38(1)(b)]@gov.scot>
Subject: RE: FOI

[redacted s38(1)(b)],

As narrow as possible. So, limited to the Scottish Ministers.

[redacted s38(1)(b)]

_____
[redacted s38(1)(b)] | Coronavirus (Scotland) Bill coordination
[redacted s38(1)(b)]

> **From:** [redacted s38(1)(b)]@gov.scot>
> **Sent:** 31 March 2020 17:55
> To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)]@gov.scot>
> Cc: Hynd JS (James) <James.Hynd@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [redacted s38(1)(b)]@gov.scot
> **Subject:** RE: FOI
>
> [redacted s38(1)(b)],
>
> We can certainly instruct something – what's the process to be followed here?
>
> Do we know the precise terms of what's been agreed? [redacted s30(b)(i)]
>
> [redacted s30(b)(i)]
>
> Happy to discuss.
>
> [redacted s38(1)(b)]
>
> [redacted s38(1)(b)]**| Head of Policy and Casework | Freedom of Information Unit**
>
> M: [redacted s38(1)(b)]
>
> **I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.**
>
> **From:** Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
> **Sent:** 31 March 2020 17:46
> **To:** [redacted s38(1)(b)]@gov.scot>
> **Cc:** Hynd JS (James) <James.Hynd@gov.scot>; [redacted s38(1)(b)]@gov.scot>;[redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [redacted s38(1)(b)]@gov.scot>
> **Subject:** RE: FOI
>
> We've just picked the news up now
>
> Penny Curtis | Head of Elections and FOI Division | Directorate for Constitution and Cabinet | Scottish Government | 2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 [redacted s38(1)(b)]| Mobile [redacted s38(1)(b)]

From: [redacted s38(1)(b)]@gov.scot>
Sent: 31 March 2020 17:45
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: Hynd JS (James) <James.Hynd@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>;[redacted s38(1)(b)]@gov.scot>;[redacted s38(1)(b)]@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [redacted s38(1)(b)]@gov.scot>
Subject: FOI

Penny,

Are you and [redacted s38(1)(b)] instructing a hand-out amendment to limit the FOI extension in the Bill to only 40 days for the Scottish Government?

On the call right now, he was acting as if the thing was agreed, wrapped up, done and dusted!

[redacted s38(1)(b)]

_____

[redacted s38(1)(b)] | Coronavirus (Scotland) Bill coordination
[redacted s38(1)(b)]

From: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Sent: 31 March 2020 20:26
To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>
Subject: Emergency Bill: FOI

Mr Russell

copy as above

[redacted – out of scope]

We are instructing possible government amendments as follows:

[redacted s29(1)(a)]

[redacted s29(1)(a)]

"The Scottish Ministers" is as you know the statutory personality for the Scottish Government and includes the prison service, Transport Scotland, Social Security as well as policy functions including health, education etc. We can't see a practical way of designing a carve-out of "front line services" or topic-specific elements without a great muddle and that would in any case miss the point that covid-related work (and absence/sickness pressures) are being felt across the complete range of range of the Scottish Government's business.

The FOI provisions in the bill have an important role in sending signals about priorities as well as in reducing burdens. We will need to be clear that taking a different approach for central government does not mean that the Covid-19 effort there – sourcing ventilators, arranging testing, managing the health service and redirecting large parts of the public sector, etc – is less valuable than that of the rest of the public sector. I suggest we also say that although transparency is crucial the reasonable cause exemption provision is essential for managing workload in a way that does not undermine the covid effort.

[redacted – out of scope]

Finally we have just seen that the Information Commissioner supports the 60 days, but not extendability. Penny and colleagues will provide advice.

David

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted s38(1)(b)] | E: david.rogers@gov.scot

From:	Curtis PS (Penelope)
To:	Rogers D (David) (Constitution and Cabinet Director); Cabinet Secretary for Constitution, Europe and External Affairs
Cc:	Minister for Parliamentary Business and Veterans; Minister for Europe and International Development; Hynd JS (James); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; Crawford E (Ewan); Coull AJ (Alison); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; Young I (Ian); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]
Subject:	RE: Emergency Bill: FOI
Date:	01 April 2020 07:34:33
Attachments:	Coronavirus (Scotland) Bill - FOISA - amendment briefing - final.docx Coronavirus (Scotland) Bill - relaxation of statutory timescales in FOISA - options for Stage 2 amendments.docx List_FOISA version 3.docx

Mr Russell

Copy as above

David will discuss the following with you this at the meeting this morning to allow you to consider your approach to amendments to the FOI provisions in the Bill. Once we know your preferred approach we will finalise the amendments and associated briefing.

Attached documents:

- Description of options/approach to amendments
- Draft amendments (to be adjusted to reflect your decision and final checks)
- Material to support the rationale for Scottish Government inclusion in the FOI provisions.

Penny Curtis | Head of Elections and FOI Division | Directorate for Constitution and Cabinet | Scottish Government | 2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 [redacted s38(1)(b)]| Mobile [redacted s38(1)(b)]

From: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Sent: 31 March 2020 20:26
To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>
Subject: Emergency Bill: FOI

Mr Russell

copy as above

A short note to round up what we are doing in relation to an amendment to secure Conservative support for the FOI provisions in the Bill following the call with you earlier.

We are instructing possible government amendments as follows:

- Concession: Scottish Ministers deadline 40 days not extendable instead of 60 days extendable if cases voluminous or complex

- Just in case we need it as a very undesirable absolute fall-back (beyond our line in the sand but for the sake of the rest of the public sector): also drop reasonable cause excuse for missing deadlines for the Scottish Ministers.

"The Scottish Ministers" is as you know the statutory personality for the Scottish Government and includes the prison service, Transport Scotland, Social Security as well as policy functions including health, education etc. We can't see a practical way of designing a carve-out of "front line services" or topic-specific elements without a great muddle and that would in any case miss the point that covid-related work (and absence/sickness pressures) are being felt across the complete range of range of the Scottish Government's business.

The FOI provisions in the bill have an important role in sending signals about priorities as well as in reducing burdens. We will need to be clear that taking a different approach for central government does not mean that the Covid-19 effort there – sourcing ventilators, arranging testing, managing the health service and redirecting large parts of the public sector, etc – is less valuable than that of the rest of the public sector. I suggest we also say that although transparency is crucial the reasonable cause exemption provision is essential for managing workload in a way that does not undermine the covid effort.

For briefing we are therefore pulling together figures on:

- The SG's total annual FOI caseload and on the level of staff effort that requires
- Statistics on the number of staff that have surged to covid work.
- Absence rates due to covid

Finally we have just seen that the Information Commissioner supports the 60 days, but not extendability. Penny and colleagues will provide advice.

David

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted s38(1)(b)] | E: david.rogers@gov.scot

CORONAVIRUS (SCOTLAND) BILL – FOI PROVISIONS – SCOTTISH GOVERNMENT

"Scottish Ministers" in FOISA includes frontline services including those delivered by Executive Agencies e.g. Scottish Prison Service and Social Security Scotland.

Agencies delivering front line services
are legally indistinguishable from the core Directorates of the Scottish Government.

It also means treating hard-pressed staff in our Health and Social Care Directorates – including many seconded NHS staff – less favourably when they too are at the forefront of our national response to coronavirus

However, it is wrong to suppose that the coronavirus response is just about staff working tirelessly to ensure our NHS has what it needs, or to ensure that benefits are paid, or that prisoners are kept in safe conditions.

- Covid-19 affects every part of part of the organisation.
- We have mobilised a 7-day, 2-shift response across government, and made a radical shift towards virtual and digital team-working.
- We shall be working in this way for months.
- At least 50 hubs and teams are now working on Covid-19 simultaneously, with many major policy, operational and staffing decisions being taken every day.

Organisational repurposing – snapshots

- The DG Health and Social area has reformed its whole operations around 3 directorates focused on the COVID response, with 85% of staff estimated to be in new roles
- More than a 100 staff have moved from other areas into just one of these health directorates
- As packages of work are identified teams are repurposed across the organisation in support, for example:
    - On Key Workers - teams from Education and Employability have come together to deliver a single response
    - On Shielding - teams across Children & Families, Housing and Social Justice, Food Standards Scotland and Food and Drink policy are working together with analysts to co-ordinate food supply and the support to the most vulnerable
    - On Testing - teams from health, Citizens Assembly and Procurement are combining capacity.
    - On Field Hospitals – senior staff from International are working with the Chief Nursing Officer

Impact of social distancing and absence

- To comply with social distancing measures SG has moved almost entirely to home working
- Building occupancy rates in our main buildings are down around 97% so there will not be access to photocopiers, printers, physical records and other equipment.

- With school closures many staff are managing caring responsibilities alongside home working
- This allied with assumptions around increases in levels of sickness will have an unpredictable and uneven impact on team capacity. The priority must be to keep critical functions operational and the COVID response fully staffed despite these likely impacts.

FOI Stats

In 2019, Scottish Government's caseload was **3,049 requests** – one third (1004 requests = 33%) were responded to by DG Health and Social Care, Transport Scotland or Social Security Scotland/Directorate for Social Security[1].

- **DG Health and Social Care** directorates responded to **279 requests** during 2019, representing **9% of the caseload**

- **Transport Scotland** responded to **579 requests**, representing **19% of the caseload**

- **Social Security Scotland** and the **Directorate for Social Security** responded to 146 requests, representing **4.8% of the caseload.**

In recent years, SG has substantially improved FOI performance with 96% of requests answered on time between July and December 2019, and 97% in January and February 2020.

John Lamont MP – Letter

"Given the current crisis, I thought the attached statement from the Scottish Information Commissioner on the impact of Covid-19 on FOI timescales was astonishing and I am requesting that the rules be relaxed."

[1] Source: Monthly reports submitted to the Scottish Information Commissioner between January and December 2019

[redacted s38(1)(b)]
EFD: FOI Unit
1 April 2020

Cabinet Secretary for the Constitution, Europe and External Affairs

CORONAVIRUS (SCOTLAND) BILL
PROVISIONS RELATING TO FREEDOM OF INFORMATION (SCOTLAND) ACT 2002
POLICY INSTRUCTIONS FOR STAGE 2 AMENDMENTS

Purpose

1. To provide advice on options for amendments to the FOI provisions in the Coronavirus (Scotland) Bill (Part 2 of schedule 6).

2. To seek your views on which option should be adopted.

Priority

3. *Immediate*. The Stage 2 lodging deadline is 12.30 pm on Wednesday 1 April.

Background

4. The Scottish Conservatives have indicated that they cannot support the provisions in the Bill that modify the Freedom of Information (Scotland) Act 2002 ("FOISA") insofar as they apply to the Scottish Government. We understand that Mr Russell has proposed that the provisions should accordingly be further modified [redacted s29(1)(a)]

(a) [redacted s29(1)(a)]

(b) [redacted s29(1)(a)]

5. Separately, the Scottish Information Commissioner ("the Commissioner") has yesterday evening issued a briefing note on the FOI provisions in the Bill to key stakeholders and MSPs with the intention of informing discussion during the Parliamentary passage of the Bill. The Commissioner's principal concerns relate to the provision enabling authorities to extend the initial period for responding to a request or a review.

6. We have instructed amendments to give effect to Mr Russell's agreement as set out in paragraph 4 above. However, we have identified further options which would allow the Scottish Ministers to address the Commissioner's concerns while still giving effect to that agreement.

Discussion

The Commissioner's concerns

7. The Scottish Information Commissioner's principal concern about the Bill relates to the provision enabling Scottish public authorities to extend the period of 60 working days by a further period of 40 working days in certain circumstances (paragraph 5 of schedule 6). Two sets of circumstances are set out in the Bill – (a) volume and complexity of the information requested, and (b) overall number of requests that the authority is dealing with.

8. In short, the Commissioner considers that (a) is unnecessary and (b) affords too much discretion to authorities, leading to concerns about misuse. More widely, he suggests that

allowing extensions in this way is not necessary at present, and proposes that the Ministers instead take powers to legislate for this as and when it becomes apparent that it has become necessary to do so.

FOI Unit analysis

9. We think there is force in the Commissioner's criticism of paragraph 5(1)(a): the interaction with the upper cost limit in FOISA had not been fully explored. We are less persuaded by the arguments in respect of paragraph 5(1)(b) – we think that everything highlighted by the Commissioner could appropriately be taken into account under that provision.

10. On balance, we think there is merit in the wider proposal that the Ministers should take powers to legislate for extensions rather than including them in the Bill at this time. The Bill will triple the time available to respond for most authorities (60 working days), and double it for the Scottish Ministers (40 working days). We can see the attraction of taking a power to introduce extensions if it later becomes apparent that the situation is so bad that authorities cannot respond within the 60 working day period. It would also allow time to work with the Commissioner to address his concerns about how broad the discretion should be in balancing the needs of authorities with the information rights of requesters.

Options for amendments

<u>Option 1: amendments to reflect discussion with Conservatives only</u>

11. This option gives effect to Mr Russell's agreement set out in paragraph 4 above. It involves amending the Bill so [redacted s29(1)(a)]

12. This would not address the Commissioner's concerns and as the key stakeholder in this area his views may well prove influential. It may therefore be undesirable not to address his concerns in any way.

<u>Option 2: amendments to reflect agreement with Conservatives and address Commissioner's concerns</u>

13. This option involves amending the Bill so that [redacted s29(1)(a)]

14. [redacted s29(1)(a)]

15. This could be presented as a pragmatic approach that shows Ministers have listened to key stakeholders and want to proceed in a way that is proportionate, while ensuring that tools are available should the situation deteriorate and the power to extend becomes necessary. There is some force behind the argument that we should see whether tripling the timescales is sufficient, before allowing authorities five times longer to respond.

<u>Option 3: amendments to reflect agreement with Conservatives while removing the ability to extend entirely</u>

16. As with Option 2, this involves amending the Bill so [redacted s29(1)(a)]

17. [redacted s29(1)(a)] This goes beyond what the Commissioner has called for, but has the advantage of simplicity if significant Parliamentary resistance is expected.

<u>Additional fallback concession</u>

18. All three options are intended to deliver what has already been discussed, [redacted s29(1)(a)]

19. [redacted s29(1)(a)]

Advice

20. In our view, bringing forward amendments which seek to take into account the Commissioner's concerns (Option 2) represents the best way forward. It would show that the Ministers have been responsive to stakeholder concern, while preserving the ability to act if the situation deteriorates. This should in turn minimise Parliamentary criticism if both the concerns of the Conservatives and the Commissioner have been addressed.

21. However, we suggest that any of the options would represent an improvement for all Scottish public authorities (including the Ministers) on the present situation.

Recommendation/Conclusion

22. You are invited to indicate which option you wish to pursue for bringing forward amendments to the FOI provisions in the Bill.

[redacted s38(1)(b)]
FOI Unit
[redacted s38(1)(b)] **1 April 2020**

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Parliamentary Business and Veterans Minister for Europe and International Development					

David Rogers
James Hynd
[redacted s38(1)(b)]
[redacted s38(1)(b)]
[redacted s38(1)(b)]
[redacted s38(1)(b)]
[redacted s38(1)(b)]
Penny Curtis
[redacted s38(1)(b)]
[redacted s38(1)(b)]
[redacted s38(1)(b)]
Alison Coull
[redacted s38(1)(b)]
[redacted s38(1)(b)]
Ian Young
Michael Anderson
Jonathan Brown
[redacted s38(1)(b)]
Ewan Crawford

From:	Curtis PS (Penelope)
To:	Rogers D (David) (Constitution and Cabinet Director); Cabinet Secretary for Constitution, Europe and External Affairs
Cc:	Minister for Parliamentary Business and Veterans; Minister for Europe and International Development; Hynd JS (James); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; Crawford E (Ewan); Coull AJ (Alison); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; Young I (Ian); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)];
Subject:	RE: Emergency Bill: FOI
Date:	01 April 2020 08:58:20

All

Mr Russell indicated at the meeting this morning that he is content with option 2: amendments to reflect agreement with Conservatives and address Commissioner's concerns. He is inclined to make a strong defence for the position.

I also took from the meeting that we should lodge amendments as soon as possible.

We may get feedback from discussions with other parties via the Bill Team.

Penny

Penny Curtis | Head of Elections and FOI Division | Directorate for Constitution and Cabinet | Scottish Government | 2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 [redacted s38(1)(b)]; | Mobile [redacted s38(1)(b)];

From: Curtis PS (Penelope)
Sent: 01 April 2020 07:34
To: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Young I (Ian)<Ian.Young@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>
Subject: RE: Emergency Bill: FOI

Mr Russell

Copy as above

David will discuss the following with you this at the meeting this morning to allow you to consider your approach to amendments to the FOI provisions in the Bill. Once we know your preferred approach we will finalise the amendments and associated briefing.

Attached documents:

- Description of options/approach to amendments
- Draft amendments (to be adjusted to reflect your decision and final checks)
- Material to support the rationale for Scottish Government inclusion in the FOI provisions.

Penny Curtis | Head of Elections and FOI Division | Directorate for Constitution and Cabinet | Scottish Government | 2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 [redacted s38(1)(b)]| Mobile [redacted s38(1)(b)]

From: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Sent: 31 March 2020 20:26
To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>
Subject: Emergency Bill: FOI

Mr Russell

copy as above

A short note to round up what we are doing in relation to an amendment to secure Conservative support for the FOI provisions in the Bill following the call with you earlier.

We are instructing possible government amendments as follows:

- Concession: Scottish Ministers deadline 40 days not extendable instead of 60 days extendable if cases voluminous or complex

- Just in case we need it as a very undesirable absolute fall-back (beyond our line in the sand but for the sake of the rest of the public sector): also drop reasonable cause excuse for missing deadlines for the Scottish Ministers.

"The Scottish Ministers" is as you know the statutory personality for the Scottish Government and includes the prison service, Transport Scotland, Social Security as well as policy functions including health, education etc. We can't see a practical way of designing a carve-out of "front line services" or topic-specific elements without a great muddle and that would in any case miss the point that covid-related work (and absence/sickness pressures) are being felt across the complete range of range of the Scottish Government's business.

The FOI provisions in the bill have an important role in sending signals about priorities as well as in reducing burdens. We will need to be clear that taking a different approach for central government does not mean that the Covid-19 effort

there – sourcing ventilators, arranging testing, managing the health service and redirecting large parts of the public sector, etc – is less valuable than that of the rest of the public sector. I suggest we also say that although transparency is crucial the reasonable cause exemption provision is essential for managing workload in a way that does not undermine the covid effort.

For briefing we are therefore pulling together figures on:

- The SG's total annual FOI caseload and on the level of staff effort that requires
- Statistics on the number of staff that have surged to covid work.
- Absence rates due to covid

Finally we have just seen that the Information Commissioner supports the 60 days, but not extendability. Penny and colleagues will provide advice.

David

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted s38(1)(b)] | E: david.rogers@gov.scot

From: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Sent: 01 April 2020 09:13
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Subject: RE: Emergency Bill: FOI

Sorry. One correction

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted s38(1)(b)] | E: david.rogers@gov.scot

From: Rogers D (David) (Constitution and Cabinet Director)
Sent: 01 April 2020 09:07
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Young I (Ian) <Ian.Young@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Subject: RE: Emergency Bill: FOI

Penny, [redacted s38(1)(b)] and colleagues

Thank you for the work overnight on this.

At the meeting just now, Ministers decided that we should certainly amend the bill to reflect what the Commissioner has asked for, ie

- retain 60 days for all public authorities incl SG
- the direction provision instead of the current provision ability for authorities to extend

In case we need fall back we should have an amendment ready to deploy [redacted s29(1)(a)]

Ms Gulruth will say at stage 1 that the SG will be accepting the Information Commissioner's recommendations and bringing forward a stage 2 amendment to that effect.

David

David Rogers
Director, Constitution and Cabinet | The Scottish Government | 4 N.04, St Andrew's House, Edinburgh, EH1 3DG | T: [redacted s38(1)(b)] | E: david.rogers@gov.scot

From: [redacted s38(1)(b)]
To: Curtis PS (Penelope)
Subject: RE: Coronavirus (Scotland) Bill - relaxation of statutory timescales in FOISA - revised draft briefing for Ministers (A27774561)
Date: 01 April 2020 10:06:00

Thanks.

[redacted s38(1)(b)]| **Head of Policy and Casework | Freedom of Information Unit**

M: [redacted s38(1)(b)]

I am currently working from home, and can be contacted by email, Skype for Business, or on my mobile.

From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Sent: 01 April 2020 10:06
To: [redacted s38(1)(b)]< [redacted s38(1)(b)]@gov.scot>
Subject: RE: Coronavirus (Scotland) Bill - relaxation of statutory timescales in FOISA - revised draft briefing for Ministers (A27774561)

Happy with this. The detail will be picked up in the stage 2 speaking note.

Penny Curtis | Head of Elections and FOI Division | Directorate for Constitution and Cabinet | Scottish Government | 2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 244 3531 | Mobile [redacted s38(1)(b)]

From: [redacted s38(1)(b)]< [redacted s38(1)(b)]@gov.scot>
Sent: 01 April 2020 09:58
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: Coronavirus (Scotland) Bill - relaxation of statutory timescales in FOISA - revised draft briefing for Ministers (A27774561)

Penny,

Content for me to send to the Bill team, or anything further?

[redacted s38(1)(b)]

Coronavirus (Scotland) Bill - relaxation of statutory timescales in FOISA - revised draft briefing for Ministers
https://erdm.scotland.gov.uk:8443/documents/A27774561/details

From: Curtis PS (Penelope)
To: [redacted s38(1)(b)]
Subject: Wee changes to the P&E note
Date: 01 April 2020 14:27:19

Amendment [A] removes paragraph 5 of schedule 6, which would give Scottish public authorities the ability to extend the deadline for responding to requests and reviews by a further 40 working days.

Amendments [B] to [E] give targeted effect to the proposal by the Scottish Information Commissioner that the Ministers should instead take powers to introduce that ability at a later date, subject to consultation with the Information Commissioner, if the situation changes and it becomes necessary to allow authorities to extend deadlines.

Amendment [C] ensures that the Ministers cannot give themselves the ability to extend deadlines

From:	Curtis PS (Penelope)
To:	Rogers D (David) (Constitution and Cabinet Director); [redacted s38(1)(b)]
Subject:	Speaking note
Date:	01 April 2020 14:41:10
Attachments:	Coronavirus (Scotland) Bill - briefing - Stage 2 - Amendment note - FOI provisions (vA40284053) - speaking note amendments.docx

David

Updated speaking notes (tracks off). The rest of the P&E note has moved on since this version so ignore the rest.

[redacted s38(1)(b)] – so you can incorporate into the

current version. P

Penny Curtis | Head of Elections and FOI Division | Directorate for Constitution and Cabinet | Scottish Government | 2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG | 0131 244 3531 | Mobile [redacted s38(1)(b)]