

From: [Curtis PS \(Penelope\)](#)
To: [Cabinet Secretary for Constitution, Europe and External Affairs; Minister for Parliamentary Business and Veterans](#)
Cc: [Minister for Europe and International Development; Lord Advocate; Solicitor General; DG Constitution and External Affairs; Thomson KAL \(Ken\) \(Director-General\); Rogers D \(David\) \(Constitution and Cabinet Director\); Solicitor to the Scottish Government; Troup C \(Colin\) \(Dr\); Hynd JS \(James\); Coull AJ \(Alison\); Beattie C \(Caroline\)](#); [redacted s38(1)(b)]; [redacted s38 (1)(b)]; [Lloyd E \(Elizabeth\)](#); [Crawford E \(Ewan\)](#); [redacted s38 (1)(b)]; [DCAC COVID](#); [Permanent Secretary](#)
Subject: IMMEDIATE - COVID-19: FOI PROVISIONS IN SCOTTISH EMERGENCY BILL
Date: 23 March 2020 12:32:41
Attachments: [FOI - coronavirus - relaxation of duties to comply with FOISA - draft advice to Minister for Parliamentary Business and Veterans.docx](#)

Cabinet Secretary for Constitution, Europe and External Affairs
Minister for Parliamentary Business and Veterans

Immediate submission on proposed provisions on FOI for the pre-Easter emergency COVID Bill.

FOI - coronavirus - relaxation of duties to comply with FOISA - draft advice to Minister for Parliamentary Business and Veterans
<https://erdm.scotland.gov.uk:8443/documents/A27548817/details>

From: Penny Curtis
Head of Elections & FOI Division
23 March 2020

Cabinet Secretary for Constitution, Europe and External Affairs
Minister for Parliamentary Business & Veterans

COVID-19: FOI PROVISIONS IN SCOTTISH EMERGENCY BILL

Purpose

1. To propose provisions for the pre-Easter Scottish COVID Emergency Bill.

Priority

2. **Immediate.**

Background

3. FOISA has no provision for derogation from the duty to respond within 20 days in a national emergency. It has a regulation-making power to allow the 20-day period to be extended, but that would reduce net FOI demand for at most 40 days.
4. The proposals here cover FOISA, but not the Environmental Information Regulations as those implement an EU Directive which has no provision for derogation. The EIRs do, however, allow a public authority an extra 20 working days to respond if the volume and complexity of the information sought justifies that.
5. The Scottish Commissioner's Office published the following on 13 March:

Statement on the impact of the Covid-19 virus on FOI timescales

A number of Scottish public authorities have contacted the Scottish Information Commissioner to ask about the requirements to comply with the timescales in the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) given the effect the Covid-19 virus is likely to have on their ability to respond to requests on time.

In the event that an appeal is made to the Commissioner about a failure by a public authority to respond on time, the Commissioner would, as things stand, have no option but to find that a public authority had failed to respond within the 20 working days set down by FOISA.

However, the Commissioner will be sympathetic to the effects that Covid-19 had on the public authority's ability to respond to requests timeously in the event that staff are unable to attend work to answer requests or are unable to carry out full searches for information because they are, for example, working from home and are unable to access information. Any (unavoidable) reasons for delay would be recognised in any decision issued by the Commissioner.

Looking forward, discussions have been taking place with the Scottish Government on whether and/or when it would be appropriate for the Scottish Parliament to enact emergency legislation to extend the 20 working day timescales in FOISA. (Given that the EIRs are based on an EU Directive, which, in turn, is based on a UN Convention, the Scottish Parliament would not have the same power to extend the timescales in the EIRs.)

The Commissioner does not believe that extending the timescales is necessary at this stage.

The Commissioner will continue to keep in contact with the Scottish Government and will update this website as and when necessary.

6. The UK Government's published guidance (FOI regime covering England, Wales, Northern Ireland and authorities carrying out reserved functions in Scotland) on the outbreak states that:

It is important that departments continue to respond to FOI requests. Statutory timescales relating to the FOIA will not be extended and organisations should continue to respond to requests in the usual way. In some cases, departments may not be able to meet statutory deadlines as a result of re-prioritisation or other pressures or because of limited access to relevant information. The ICO has indicated that it will not penalise organisations that need to prioritise other areas or adapt their usual approach during this period.

Factors to consider

7. If we do nothing, despite the commissioner's statement, that would still leave authorities breaking the law, potentially making a range of inconsistent decision, and in a quandary about guidance to staff.

8. Any relaxation of the FOISA regime would have to be, and be seen to be, proportionate to the current circumstances and would not undermine transparency, particularly after the pandemic.

Why the regulation power in FOISA is insufficient

9. FOISA enables regulations to extend FOI deadlines to up to 60 working days for requests, or by for any period for reviews. Such regulations could provide different periods in different cases, or confer a discretion on the Commissioner to extend deadlines in individual cases. To have such regulations in force quickly would require suspension of standing orders as they otherwise would need the 40 days of the affirmative procedure.

10. We do not think that such regulations are the solution for the current circumstances. Commissioner discretion in individual cases would be counterproductive requiring bureaucratic decision-making to justify each decision. Extending the deadline from 20 to 60 days would provide flexibility for public authorities in the short term, but after a 40-day lull the FOI workload would resume thereafter and peak once the extension ceased to have effect.

Proposal for the Emergency Bill

11. We propose a package of temporary amendments to the FOISA regime as follows:

- extension of the default deadline from 20 working days to 60 working days (3 months) for information requests and reviews.
- a provision similar to that in the EIRs allowing an authority to extend a response deadline by a further period (we propose 2 months) if voluminous and complex information is sought
- a “without reasonable cause” qualification of the duty to comply with the deadline
- an explanation in the explanatory notes to the Emergency Bill/Act that such reasonable causes include workload pressures relating to the pandemic or recovery from it.

12. Such a package would reduce the pressure on public authorities significantly for the next 5 months. There would be a back-log after the pandemic, but the reasonable cause qualification could be extended for a few months to allow that to be cleared without an excessive burden on resources.

13. We have also looked at blanket or sectoral disapplication of the FOISA duty to respond for (say) 3 months, with provision for renewal, but those options are clumsier and would result in a big peak of FOI pressure as soon as the suspension ceased.

Presentation

14. Any relaxation of FOI may, of course, attract some criticism. An announcement would be accompanied by assurances about the Scottish Government’s commitment to openness about all aspects of its business, particularly the response to COVID.

Recommendation

15. That you:

- consider whether the proposed approach can be defended as appropriate during the pandemic; and
- subject to that, agree that we should develop it for inclusion in the pre-Easter Scottish COVID Emergency Bill.

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Europe and International Development			✓		
Lord Advocate			✓		
Solicitor General			✓		

Permanent Secretary Ken Thomson David Rogers Ruaraidh Macniven

Colin Troup
James Hynd
Alison Coull
Caroline Beattie
[redacted s38(1)(b)]
Liz Lloyd
Ewan Crawford

From: [redacted s38(1)(b)] @gov.scot> **On Behalf Of** Minister for Parliamentary Business and Veterans

Sent: 23 March 2020 17:43

To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>

Cc: Minister for Europe and International Development <MinisterEID@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; Thomson KAL (Ken) (Director-General) <Ken.Thomson@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Coull AJ (Alison) <Alison.Coull@gov.scot>; Beattie C (Caroline) <Caroline.Beattie@gov.scot>; [redacted s38(1)(b)] @gov.scot>; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; [redacted s38(1)(b)] @gov.scot>; DCAC COVID <DCAC-COVID@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>

Subject: RE: IMMEDIATE - COVID-19: FOI PROVISIONS IN SCOTTISH EMERGENCY BILL

Hi Penny

Mr Dey is content for his interests

Thanks,

[redacted s38(1)(b)]

[redacted s38(1)(b)]

Assistant Private Secretary

**Minister For Parliamentary Business and Veterans & Cabinet Secretary for Constitution,
Europe and External Affairs
Scottish Parliament**

Tel: 0131 244 [redacted s38(1)(b)]

Email: MinisterPBV@gov.scot

Email: CabSecCEAEA@gov.scot

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

Sent: 23 March 2020 16:39

To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)@gov.scot]

Cc: [redacted s38(1)(b)@gov.scot]; [redacted s38(1)(b)@gov.scot]; [redacted s38(1)(b)@gov.scot]

Subject: FOI - covid-19 - relaxation of statutory timescales in FOISA - draft policy instructions (A27638395)

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

First draft of instructions now in eRDM (see below).

[redacted s29(1)(a)]

I've alerted [redacted s38(1)(b)] to the fact that something is in the offing, but said I'm running it past you first.

Happy to discuss.

[redacted s38(1)(b)]

FOI - covid-19 - relaxation of statutory timescales in FOISA - draft policy instructions

<https://erdm.scotland.gov.uk:8443/documents/A27638395/details>

From: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Sent: 23 March 2020 13:13
To: Curtis PS (Penelope) <Penelope.Curtis@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; [redacted s38(1)(b)]@gov.scot
Cc: [redacted s38(1)(b)]@gov.scot; [redacted s38(1)(b)]@gov.scot
Subject: RE: URGENT: Note from Mr Russell - Coronavirus Bill - Emergency Legislation

[redacted s30(b)(ii)]

There is text in the submission dismissing a blanket ban as too clumsy. But you could offer as an alternative, as it has the merit of simplicity and we would include some provisions allowing secondary legislation to allow phased reintroduction of the duty to allow the backlog to be cleared in a manageable way. Or leave that to a recovery bill.

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) <Penelope.Curtis@gov.scot>
Sent: 23 March 2020 12:16
To: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@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
Cc:[redacted s38(1)(b)]@gov.scot; [redacted s38(1)(b)]@gov.scot
Subject: RE: URGENT: Note from Mr Russell - Coronavirus Bill - Emergency Legislation

Ok, 2 options here:

- Stick with what we're proposing – proportionate but not over-reaching or removing people's rights
- Offer an alternative of blanket suspension of FOISA for a Covid period – simple, offers certainty for public authorities, might be proportionate in response to the level of the emergency, but it's a judgement – might not get support, too far-reaching.

David – are you saying what we're proposing is better or what's suggested is better?!

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 07827 232493

From: Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Sent: 23 March 2020 12:01
To: 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; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: [redacted s38(1)(b)]@gov.scot; [redacted s38(1)(b)]@gov.scot
Subject: RE: URGENT: Note from Mr Russell - Coronavirus Bill - Emergency Legislation

Adding [redacted s38(1)(b)] and [redacted s38(1)(b)].

That's what we are proposing – only better.

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: Hynd JS (James) <James.Hynd@gov.scot>

Sent: 23 March 2020 11:41

To: [redacted s38(1)(b)]@gov.scot; [redacted s38(1)(b)]@gov.scot; [redacted s38(1)(b)]@gov.scot; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>

Subject: FW: URGENT: Note from Mr Russell - Coronavirus Bill - Emergency Legislation

To see.

David, Penny - to see the FOI reference in (my) yellow highlight

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext 43223
0131 244 3223

From: [redacted s38(1)(b)]@gov.scot <[\[redacted s38\(1\)\(b\)\]@gov.scot](mailto:[redacted s38(1)(b)]@gov.scot)> **On Behalf Of** Cabinet Secretary for Constitution, Europe and External Affairs

Sent: 23 March 2020 09:54

To: 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;

Cc: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>

Subject: FW: URGENT: Note from Mr Russell - Coronavirus Bill - Emergency Legislation

Hi all

See return from Ms Freeman.

Thanks

[redacted s38(1)(b)]

[redacted s38(1)(b)]

Deputy Private Secretary to the Cabinet Secretary for Constitution, Europe and External Affairs

T4.21 | Scottish Parliament | Edinburgh | EH99 1SP | 0131 244 [redacted s38(1)(b)]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [redacted s38(1)(b)]@gov.scot> **On Behalf Of** Cabinet Secretary for Health and Sport
Sent: 23 March 2020 09:53
To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>;
Cabinet Secretary for Health and Sport <CabSecHS@gov.scot>
Subject: RE: URGENT: Note from Mr Russell - Coronavirus Bill - Emergency Legislation

[redacted s38(1)(b)],

The Cabinet Secretary has asked for the following issues to be included in the emergency legislation. These have been passed to SGLD colleagues taking forward this work.

Many thanks,
[redacted s38(1)(b)]

[redacted out of scope]

[redacted out of scope]

Suspension of FOI legislation in order to allow staff (NHS and Local Government, but potential to extend more widely) to focus on essential activities.

[redacted out of scope]

From: [redacted s38(1)(b)]@gov.scot> **On Behalf Of** Cabinet Secretary for Constitution, Europe and External Affairs
Sent: 19 March 2020 09:18
To: DL Cabinet Secretaries <DLMPOPCABSEC@gov.scot>
Cc: First Minister <firstminister@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Subject: URGENT: Note from Mr Russell - Coronavirus Bill - Emergency Legislation
Importance: High

Private Offices

Please see note below from Mr Russell. Grateful if you could pass this on to your Cabinet Secretary as soon as possible. Mr Russell would be grateful for returns by **Monday 23 March 10 am.**

Many thanks
[redacted s38(1)(b)]

I am presently drawing together plans for a piece of emergency legislation to be taken through the Parliament in the week before recess which will be designed to ensure any absolutely urgent requirements for temporary legislative change which were not met in the UK Bill are put in place as soon as possible.

I know that there is an ongoing official trawl for issues to be addressed by a specifically Scottish Coronavirus Bill and that the Minister for PBV gave notice of this intention at the Ministers meeting last night but I now need to know by Monday what is urgently required so that we can get on with delivering those items as fast as we can. Items of less urgency will be able to be delivered after Easter when we will be considering any further legislation we need.

However items that would be politically contentious – in that it would be difficult to get a majority for them in the Parliament – should only be included in this first bill they are essential as it would be my hope that this new bill would be able to get near unanimous approval in the chamber.

Please let me know by Monday 10 am if there is anything you wish to be considered and if there have been any drafting instructions prepared. I intend to give the Chamber notice today when making the statement on the LCM for the UK Bill that we are likely to bring forward an emergency bill very soon and to provide more detailed information to Cabinet on Tuesday.

MR

[redacted s38(1)(b)]

Deputy Private Secretary to the Cabinet Secretary for Constitution, Europe and External Affairs

T4.21 | Scottish Parliament | Edinburgh | EH99 1SP | 0131 244 [redacted s38(1)(b)]

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [redacted s38(1)(b)]
Sent: 23 March 2020 15:44
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)]@gov.scot>
Cc: [redacted s38(1)(b)]@gov.scot>
Subject: RE: IMMEDIATE - COVID-19: FOI PROVISIONS IN SCOTTISH EMERGENCY BILL

It's difficult to imagine a more technical and non-contentious provision – the more so when we see what is proposed alongside it!

The only issue would be sunseting: it would presumably be a nuisance for that change to expire when the Covid legislation does, meaning the Commissioner has to go back to issuing by post. That said, I imagine there will need to be legislation to put things back in proper order once this is all over, so perhaps we might be able to make the change perpetual at that point.

It would be a discretionary power, so the Commissioner could continue to issue by post where needed.

[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: 23 March 2020 15:40
To: [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>
Cc: [redacted s38(1)(b)]@gov.scot>
Subject: RE: IMMEDIATE - COVID-19: FOI PROVISIONS IN SCOTTISH EMERGENCY BILL

Yup, if it's doable and non-controversial (which I think it is) then probably a good thing – as [redacted s38(1)(b)] says, something they've asked for is a good thing. Any down side?

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)]@gov.scot>
Sent: 23 March 2020 15:38
To: [redacted s38(1)(b)]@gov.scot>; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Cc: [redacted s38(1)(b)]@gov.scot
Subject: RE: IMMEDIATE - COVID-19: FOI PROVISIONS IN SCOTTISH EMERGENCY BILL

Well timed – I'm just starting on the final section about ancillary matters... can't see that it would hurt to throw something in.

[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: [redacted s38(1)(b)]@gov.scot>

Sent: 23 March 2020 15:37

To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)]@gov.scot>

Cc: [redacted s38(1)(b)]@gov.scot>

Subject: RE: IMMEDIATE - COVID-19: FOI PROVISIONS IN SCOTTISH EMERGENCY BILL

Suddenly occurred to me (and [redacted s38(1)(b)] and I had chatted) that the Commissioner would like the Act to be amended to allow him to issue decisions electronically. Might we add that in [redacted s38(1)(b)]?

From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>

Sent: 23 March 2020 18:53

To: [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>

Cc: [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>

Subject: RE: FOI - covid-19 - relaxation of statutory timescales in FOISA - draft policy instructions (A27638395)

[redacted s38(1)(b)]

Thanks, happy with most the changes and your responses to my comments – just promptly concerns me.

Promptly – I think we need to work this through properly. I think it's a balance here but the circumstances we're dealing with means that we know some/many authorities won't be able to respond promptly to possibly even the simplest of requests. A request today to an NHS Board or Local Authority might not even be picked up, possibly left in an inbox until things are well past this current phase of COVID activity. Can we instruct the other changes and reflect that we need to consider the promptly aspect again? OK to have some discussion of the issue in the sub, but it needs to reflect this scenario and maybe highlights it as something for discussion between us and [redacted s30(c)]?

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 [redacted s38(1)(b)] | Mobile [redacted s38(1)(b)]

From: [redacted s38(1)(b)]@gov.scot>

Sent: 23 March 2020 18:43

To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [redacted s38(1)(b)]@gov.scot>

Cc: [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>

Subject: RE: FOI - covid-19 - relaxation of statutory timescales in FOISA - draft policy instructions (A27638395)

Penny,

Some tweaks on the draft in eRDM in response to your comments. The only substantive thing is round about "promptly" – if we want to give a blanket 60 days in every case, no matter how straightforward the request, then we'll need to disapply that. I don't *think* that's the preferred policy, but thought I should perhaps check.

If you're otherwise content, I'll get a clean copy up to [redacted s38(1)(b)]. She's off for the evening now, but I imagine she'll pick it up first thing.

[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: 23 March 2020 17:46

To: [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>

Cc: [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>; [redacted s38(1)(b)]@gov.scot>

Subject: RE: FOI - covid-19 - relaxation of statutory timescales in FOISA - draft policy instructions (A27638395)

Thanks [redacted s38(1)(b)], I've made a few comments but nothing big. I think it's worth getting it to [redacted s38(1)(b)] quickly, flagging that bits may change slightly, and I'm sure will change when we get [redacted s30(c)] comments back.

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 244 [redacted s38(1)(b)] | Mobile [redacted s38(1)(b)]

From: [redacted s38(1)(b)]
To: [Cabinet Secretary for Constitution, Europe and External Affairs](#); [First Minister](#); [Deputy First Minister and Cabinet Secretary for Education and Skills](#); [Minister for Parliamentary Business and Veterans](#); [Lord Advocate](#); [Solicitor General](#); [Permanent Secretary](#); [Lloyd E \(Elizabeth\)](#); [Crawford E \(Ewan\)](#); [Nicolson S \(Stuart\) Special Adviser](#)
Cc: [DG Constitution and External Affairs](#); [Thomson KAL \(Ken\) \(Director-General\)](#); [redacted s38(1)(b)]; [Rogers D \(David\) \(Constitution and Cabinet Director\)](#); [Hynd JS \(James\)](#); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [Dennis R \(Richard\)](#); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [McGillivray D \(Donald\)](#); [redacted s38(1)(b)]; [Sizeland B \(Bettina\)](#); [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [redacted s38(1)(b)]; [Solicitor to the Scottish Government](#); [Coull AJ \(Alison\)](#); [redacted s38(1)(b)]; [Chief Parliamentary Counsel](#); [Paterson J \(John\)](#); [Young I \(Ian\)](#); [Anderson M \(Michael\)](#); [Fowler K \(Kenneth\)](#); [redacted s38(1)(b)]; [Legal Secretariat to the Lord Advocate](#)
Subject: IMMEDIATE - sub for Cab Sec - Coronavirus (Scotland) Bill - possible content of Bill
Date: 23 March 2020 19:29:16
Attachments: [Note for Cab Sec - content of Coronavirus \(Scotland\) Bill.docx](#)

[redacted s38(1)(b)],

Please find an urgent note for the Cab Sec attached.

As he is aware, this is all moving fast. We can provide updates at tomorrow's meeting.

[redacted s38(1)(b)]

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

From: [redacted s38(1)(b)] and [redacted s38(1)(b)]
Directorate for Constitution and Cabinet
23 March 2020

Cabinet Secretary for Constitution, Europe and External Affairs
Copy list,

CORONAVIRUS (SCOTLAND) BILL -- POSSIBLE CONTENT

Purpose

1. To share with you the results of cross-governmental trawls for possible subjects to be included in the Coronavirus (Scotland) Bill, and our initial thoughts about their prioritisation.

The content of the Bill

2. Please see the **Annex** for a table containing a summary of proposed measures following the result of the trawls. As you indicated, these have been assessed against the following criteria:

- **necessity:** that is, whether they are required to address the Covid-19 outbreak. The assessment of necessity also includes whether the measure can be achieved (or largely achieved) under existing powers, or under powers expected to be granted by the UK Coronavirus Bill.
- **urgency:** that is, whether only an emergency Bill can deliver the measure when it is needed. This assessment takes into account our view that it is now inevitable that there will have to be further primary legislation to respond to the Covid-19 outbreak after the Easter recess, for those measure that do not need to (or cannot) be brought into effect before then.
- **support:** that is, whether the measures are likely to have broad support across the Scottish Parliament, as would be expected for emergency legislation.
- **capacity:** in some cases, measures are easier to draft or instruct and can be included reasonably efficiently; in other cases, the urgent instruction and drafting of a measure may be impractical or may disrupt other urgent Covid-19-related preparations.

3. [redacted – out of scope]

4. [redacted – out of scope]

5. The product of this exercise would be a Bill with three main themes:

- [redacted out of scope]
- [redacted out of scope] extending FOI deadlines to allow public services to focus on dealing with the outbreak, [redacted out of scope]
- [redacted out of scope]

Timetable

6. [redacted – out of scope]
7. [redacted – out of scope]
8. [redacted – out of scope]
9. [redacted – out of scope]

Next steps

10. [redacted – out of scope]
11. [redacted – out of scope]
12. [redacted – out of scope]

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

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awarene
First Minister Deputy First Minister Lord Advocate			X X X		
<u>Exec Team</u> Permanent Secretary DG Constitution and External Affairs <u>Constitution and Cabinet</u> David Rogers James Hynd [redacted s38(1)(b)] [redacted s38(1)(b)] [redacted s38(1)(b)] [redacted s38(1)(b)] <u>Policy leads</u> [redacted s38(1)(b)] [redacted s38(1)(b)] [redacted s38(1)(b)] [redacted s38(1)(b)] [redacted s38(1)(b)] [redacted s38(1)(b)] [redacted s38(1)(b)] Don McGillivray [redacted s38(1)(b)] [redacted s38(1)(b)] Bettina Sizeland Diane Strachan Maria McCann James Laing Tom McNamara			<u>Legal</u> Solicitor Alison Coull [redacted s38(1)(b)] Chief Parliamentary Counsel Ian Young Michael Anderson Legal Sec't to the Lord Advocate <u>Comms</u> Kenneth Fowler [redacted s38(1)(b)] <u>Special Advisers</u> Liz Lloyd Ewan Crawford Stuart Nicholson		

ANNEX

Green – strong candidate for inclusion

Amber – further checking required, or could potentially wait for future Bill

Red – does not look appropriate for emergency Bill

Policy area	Topic(s)	RAG	Comments
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Red	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
FOI	Extension of the default deadline from 20 days to 3 months	Green	Fits well with lifting pressure off public sector, especially in relation to public services on the front line of the fight against coronavirus. If necessary, some scope for deferring this to a second Bill. Some potential for criticism that Government relaxing duties on itself.
	A provision like that in the EIRs allowing an authority to extend a response deadline by a further 2 months if voluminous and complex information is sought.	Green	
	A “without reasonable cause” qualification of the duty to comply with the deadline.	Green	
	An explanation in the explanatory notes to the Emergency Bill/Act that such reasonable causes include workload pressures relating to the pandemic or recovery from it.	Green	
[redacted – out of scope]	[redacted – out of scope]	Red	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Amber	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Green	[redacted – out of scope]
[redacted – out of scope]	[redacted – out of scope]	Red	[redacted – out of scope]

