

[Redacted]

- Due to the coronavirus crisis, it is clearly not be possible to organise and hold an independence referendum that is beyond legal challenge before the end of the current Parliamentary term.
- 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, most likely in the early part of the new Parliament.
- 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.

[Redacted]

From: Penny Curtis, [Redacted]
CCD: EFOI/CUKR
2 February 2021

Cabinet Secretary for Government Business and Constitutional Relations
First Minister

PROGRAMME FOR GOVERNMENT COMMITMENT: PUBLICATION OF A DRAFT INDEPENDENCE REFERENDUM BILL – APPROACH AND TIMING

Purpose

1. To set out a proposed plan for publication of a draft Independence Referendum Bill in this Parliament and the handling implications, and to confirm that you are content that work on preparing the draft bill should start now. It would be helpful to have an early discussion of the matters raised in this submission.

Priority

2. Routine. However, work to prepare a Bill in time for publication in this Parliamentary session needs to commence imminently.

Background

3. The Programme for Government for 2020/21 included a commitment to publish a draft Independence Referendum Bill during the current Parliament. Previous work on independence and a draft Bill was paused, and resources were redeployed, in March in response to the pandemic. [Redacted] The commitment to publish a draft Bill was restated in the SNP Route Map to a Referendum.

4. In order to deliver the PfG commitment to publish a draft Bill in the current Parliament, work to provide more detailed advice on the approach, and to instruct the short draft Bill and develop any accompanying material will need to start now. This submission sets out a proposed plan for that work, [Redacted].

Scope of the work

5. The PfG commitment is:

...before the end of this parliament, to set out the terms of a future referendum clearly and unambiguously to the people of Scotland, the Scottish Government will publish a draft bill for an independence referendum setting 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 taking account of the development of the COVID-19 pandemic at the time of publication, and ensuring the flexibilities to respond to any further restrictions caused by it.

6. The main commitment is therefore to publish a draft Bill. The elements that will need to be considered for such a Bill are at Annex A [Redacted]. The two specific issues mentioned in PfG are the question to be asked and the timescale for the referendum to be held.

7. Work was done early in 2020 on the question for a future referendum bill prior to approaching the Electoral Commission for its advice on that question. The work was paused in March. The main difference in the current approach is that we would publish the question in a draft Bill before the Commission has offered a view. [Redacted].

8. A decision on the approach to timescales in the draft Bill for holding the referendum will be required. The main timetabling issues are summarised in the Annex. [Redacted].

9. [Redacted].

Handling considerations

10. [Redacted].

11. [Redacted].

12. [Redacted].

Timing of Publication

13. The commitment is to publish the draft Bill during this term of the Parliament which will need to be before the start of the pre-election period on 25 March. There will be considerable interest in its publication and scrutiny of the Scottish Government's work on the issue. [Redacted]. At this stage we predict that early-mid March should be a realistic timescale to work towards. We would be grateful for your views on timing.

Resources

14. [Redacted].

Conclusion

15. You are invited to note the scope of the work to fulfil the PfG commitment to publish a draft Independence Referendum Bill this Parliament, and the associated handling issues, and to indicate whether you are content for work to prepare a draft Bill to start.

16. It would be helpful to have an early discussion with you on the matters raised in this submission.

PENNY CURTIS and [Redacted]

CCD: Elections and FOI/Constitution and UK Relations

[Redacted]

2 February 2021

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister Minister for Parliamentary Business and Veterans Lord Advocate Solicitor General		X X	X		X

Permanent Secretary DG Constitution and External Affairs David Rogers James Hynd Colin Troup LSLA Ruairaidh Macniven Andy Beattie [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] Liz Lloyd Ewan Crawford
--

ANNEX A

Content of the Bill

1. The Referendums (Scotland) Act 2020 provides the detailed conduct and campaign rules for a referendum held on a devolved matter under an Act of the Scottish Parliament. Primary legislation is required to set the date of the poll and the question, and the format of the ballot paper.

Referendum Question

2. The Government wrote to the Electoral Commission in February 2020 asking it to provide advice on the question used in the 2014 referendum. In March the Government indicated that it did not expect the Commission to undertake testing of a referendum question until public health circumstances permits such activity. The Commission's Board has, therefore, not yet taken a decision on the request for advice.

3. The PfG commitment now envisages publication of the draft Bill before testing of the question by the Electoral Commission. It is not necessary to have the Commission's advice on the question at the point at which a draft Bill is published. Indeed, the Referendums Act requires that the Commission's advice is provided as soon as practicable after introduction of a Bill. [Redacted].

4. [Redacted]

Date of the Referendum

5. The date of the poll is one of the key elements of a referendum bill, but for the purposes of a draft Bill for publication in the current Parliament, it will not be possible to identify a specific date (paragraph 8 of the main submission). [Redacted].

6. [Redacted]

7. [Redacted]

8. [Redacted]

9. [Redacted]

Franchise

10. The franchise for devolved referendums is set out in the Referendums Act. The policy intention was that the franchise for any referendum mirror the franchise for Scottish Parliament and local government elections. [Redacted]

[Redacted]

11. [Redacted]

From: [Redacted] **On Behalf Of** Cabinet Secretary for Constitution, Europe and External Affairs
Sent: 16 February 2021 09:11
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Cc: [Redacted]; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Subject: RE: OFF - SEN: Programme for Government Commitment - Publication of a Draft Independence Referendum Bill - Approach and Timing

Hi Penny,

Mr Russell is content.

Thanks,

[Redacted]

[Redacted] | Private Secretary to Michael Russell, Cabinet Secretary for Constitution, Europe and External Affairs [Redacted]
cabsecCEAEA@gov.scot

#SCOTLAND|SNOW



From: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Sent: 16 February 2021 09:06
To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>
Cc: [Redacted] ; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
Subject: RE: OFF - SEN: Programme for Government Commitment - Publication of a Draft Independence Referendum Bill - Approach and Timing

Hi [Redacted]

Sorry to chase again as I know you've all got so much on. Would you be able to get a response back to us on this?

Thanks

Penny

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
[Redacted]

From: Curtis PS (Penelope)
Sent: 08 February 2021 16:34
To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>

Subject: RE: OFF - SEN: Programme for Government Commitment - Publication of a Draft Independence Referendum Bill - Approach and Timing

Thanks [Redacted], appreciate it.

Penny

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
[Redacted]

From: [Redacted] **On Behalf Of** Cabinet Secretary for Constitution, Europe and External Affairs

Sent: 08 February 2021 16:33

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

Cc: Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Subject: RE: OFF - SEN: Programme for Government Commitment - Publication of a Draft Independence Referendum Bill - Approach and Timing

Hi Penny,

I'll speak to Mr Russell about this later. He looked at it on Friday, but he's not shared his views yet.

[Redacted]

[Redacted] | Private Secretary to Michael Russell, Cabinet Secretary for Constitution, Europe and External Affairs | [Redacted]
cabsecCEAEA@gov.scot

#SCOTLANDISNOW



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

Sent: 08 February 2021 16:28

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

Cc: Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Subject: RE: OFF - SEN: Programme for Government Commitment - Publication of a Draft Independence Referendum Bill - Approach and Timing

Hi [Redacted]

Hoping to get a response on this soon. Do let me know if there's anything else needed to help it along.

Kind regards

Penny

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
[Redacted]

From: Curtis PS (Penelope)

Sent: 02 February 2021 15:50

To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; First Minister <firstminister@gov.scot>

Cc: Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; David Rogers <David.Rogers@gov.scot>; [Redacted]; Hynd JS (James) <James.Hynd@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; Beattie A (Andy) <Andy.Beattie@gov.scot>; [Redacted]; Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>; Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Subject: OFF - SEN: Programme for Government Commitment - Publication of a Draft Independence Referendum Bill - Approach and Timing

PS First Minister and Mr Russell

Routine submission on PfG commitment

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
[Redacted]

From: [Redacted]
Sent: 18 February 2021 10:52
To: [Redacted]
Cc: [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: RE: Referendum Bill- draft instructions

Hi [Redacted]

I think the solution outlined in your final paragraph is a starter for 10.

Best wishes

[Redacted]

[Redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | Mob: [Redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

From: [Redacted]
Sent: 18 February 2021 10:50
To: [Redacted]
Cc: [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: RE: Referendum Bill- draft instructions

Many thanks [Redacted].

[Redacted]

From: [Redacted]
Sent: 18 February 2021 08:01
To: [Redacted]
Cc: [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: RE: Referendum Bill- draft instructions

Hi [Redacted]

I have added some comments and observations to the attached draft for your consideration.

[Redacted]

Happy to discuss any of the above in advance of this afternoon's meeting, if that would be helpful.

Best wishes

[Redacted]

[Redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | Mob: [Redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

From: [Redacted]
Sent: 17 February 2021 21:07
To: [Redacted]; [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: RE: Referendum Bill- draft instructions

[Redacted]

From: [Redacted]
Sent: 17 February 2021 18:05
To: [Redacted]; [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: RE: Referendum Bill- draft instructions

[Redacted]. I'll have a look at this and get back to you first thing tomorrow.

Best wishes

[Redacted]

[Redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | Mob: [Redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

From: [Redacted]
Sent: 17 February 2021 17:57
To: [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]
Subject: RE: Referendum Bill- draft instructions

Hi [Redacted]

I've had a quick look and [Redacted]

Thanks,
[Redacted]

[Redacted]
Coronavirus Legislation Co-ordination
Constitution and Cabinet Directorate

From: [Redacted]
Sent: 17 February 2021 18:03
To: [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]
Subject: RE: Referendum Bill- draft instructions

Hi [Redacted]

[Redacted]

Thanks

[Redacted]

[Redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | Mob: [Redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

From: [Redacted]

Sent: 17 February 2021 16:58

To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; [Redacted]

Subject: Referendum Bill- draft instructions

Hi everyone,

Please see attached first draft of the policy instructions for the draft Referendum Bill.
Grateful for any comments.

[Redacted]

Best wishes,

[Redacted]

From: [Redacted]

Sent: 25 February 2021 13:22

To: [Redacted]; [Redacted]; [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; [Redacted]

Subject: Project plan- for comment

Hi everyone,

Please see attached draft project plan. I will need to add a strand for briefing and similar, but would welcome views on the bill related tasks. I've tried to allocate time fairly and balance time for drafting v. responding to ministerial feedback.

Best wishes,

[Redacted]

From: [Redacted];

Sent: 25 February 2021 15:54

To: [Redacted]; [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; [Redacted]; [Redacted]

Subject: re: Project plan- for comment

[Redacted]

We just spoke, thanks for this and apologies once again for missing yesterday's meeting (IT issues).

Copying in [Redacted] from my Branch who will be working with me on this. Grateful if she could be included in any exchanges going forward.

Kind regards,

[Redacted]

[Redacted]

Scottish Government Legal Directorate | Victoria Quay, Edinburgh | [Redacted]

I am currently working from home with the exception of Mondays which are my non-working day.

From: [Redacted]
Sent: 26 February 2021 13:19
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>;

I've updated the instructions for the bill as attached- can you take a look?

From: [Redacted]
Sent: 2 March 2021 13:00
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; [Redacted]
Subject: Covering paper- referendum bill

Hi everyone,

Please see attached first draft of the covering paper. [Redacted]. Any comment welcome!

Best wishes,

[Redacted]

From: [Redacted];
Sent: 3 March 2021 12:10
To: [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]
Subject: Covering paper- referendum bill

Hi [Redacted]

Some comments from me. Sorry there are more questions than helpful drafting suggestions.

Best wishes

[Redacted]

[Redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | Mob: [Redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

From: [Redacted]

Sent: 04 March 2021 09:20

To: [Redacted]; [Redacted]

Cc: [Redacted]

Subject: COMMENTS REQUESTED BY 9 MARCH: Draft official reply on climate emergency and indyref2

Morning [Redacted]

[Redacted]

On 18 March 2020, the Scottish Government announced that work to prepare for an independence referendum was paused in order to focus on the response to the Covid-19 pandemic. Aside from the publication of a draft bill for an independence referendum for introduction during the next parliamentary term, which will require a minimal amount of civil service resources and time, that continues to be the Scottish Government's position, and all other work is currently paused.

[Redacted]

[Redacted]

Constitution & Cabinet Directorate

I am working from home but contactable via email, skype or at:

[Redacted]

From: [Redacted]

Sent: 03 March 2021 18:42

To: [Redacted]; [Redacted]

Cc: [Redacted]

Subject: COMMENTS REQUESTED BY 9 MARCH: Draft official reply on climate emergency and indyref2

[Redacted] / [Redacted] (cc [Redacted] for awareness of adaptation para in draft response)

I would be grateful for comments on the draft official reply below by close on 9 March. The original correspondence covering the global climate emergency and IndyRef2 is at the start of this email chain.

[Redacted]; [Redacted]

[Redacted]; [Redacted]

Many thanks.

Draft official reply

[Redacted]

[Redacted]

Scottish Government
Directorate for Energy and Climate Change
Climate Change Division
3-F South
Victoria Quay
Edinburgh
EH6 6QQ

[Redacted]
Website: www.gov.scot/policies/climate-change/

From:
[FirstMinisterWebsite@gov.scot][SMTP:FIRSTMINISTERWEBSITE@GOV.SCOT]
Sent: 12 February 2021 12:05:24
To: First Ministers Website Mailbox
Subject: [Redacted]
Auto forwarded by a Rule

From: [Redacted]
Subject: [Redacted]

Message Body:
[Redacted]

--
This e-mail was sent from a contact form on the First Minister of Scotlands website
(<https://firstminister.gov.scot>)

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

From: [Redacted]
Sent: 09 March 2021 11:40
To: [Redacted]
Cc: [Redacted]
Subject: RE: Proposed publication- week beginning 15th March

Hi [Redacted],

Thanks for confirming. If you could get the Publishing Form over in the meantime, this will allow me to get the job registered on our system and provide you with a cost estimate for this.

Please just let me know if you have any questions in the meantime!

Thanks,
[Redacted]

APS Group
21 Tennant Street
Edinburgh
EH6 5NA

[Redacted]

My normal working hours are 8am-5pm, Monday to Friday

www.theapsgroup.com

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From: [Redacted]
Sent: 09 March 2021 11:32
To: [Redacted]
Cc: [Redacted]
Subject: RE: Proposed publication- week beginning 15th March

Hi [Redacted],

I think that sounds fine in terms of the cover. I will try and factor as much time as possible in- we haven't pinned down a specific publication date yet but hope to have something more definite to tell you within the next couple of days.

I should hopefully be able to get a draft document over within the next couple of days as well. The format is a short covering paper (around 4 pages) and a piece of draft legislation (again, around 4 pages).

Best wishes,

[Redacted]

From: [Redacted]

Sent: 07 March 2021 12:15

To: [Redacted]

Cc: [Redacted]

Subject: RE: Proposed publication- week beginning 15th March

Hi [Redacted],

Thanks for confirming. Given the timescales, we would request that you provide the document in its final format, and our Studio will then add the front cover from the previous publication – does that suit?

We typically request at least 5 working days from when you hand over the final document to the date of publication. If you could factor that into your timescales that would be great, however if this needs to be expedited then please let me know.

If you could supply us with the draft version of your document as well, that would be great. We would then ask our Studio to take a look at this and run an accessibility report to make sure it complies with SG accessibility guidelines.

As your document will be published on the SG website, you should note the following advisory information:

Scottish Government Accessible Publications – SG follow accessibility guidelines as endorsed by Scottish Accessible Information Forum (SAIF) and the Scottish Government Equality Unit and which are underpinned by legislation. To assist you to prepare your final document, I have attached a copy of the Scottish Government’s Inclusive Communication Top Tips.

Acronyms – If your document contains acronyms, these will be identified in our web conversion quality check and you will be sent a table listing them. APS may be able to populate some or all definitions from our acronym database, however, you will need to check and complete this table and return as quickly as possible to avoid any delay in publication.

SG Web Registration – After allocation of your publication’s ISBNs you will be sent a link to an SG Web Publications online form which you must complete (confirming publication dates and time) to allow publication.

Cover – To comply with SG Web publishing guidelines, your report will be collated with a standard SG Web cover inclusive of Scottish Government copyright information, required ISBN and DPPAS Product Code.

Images – The new PPDAS contract now requires APS to ensure that any images that we publish or reproduce, that have been supplied by the client, have the correct copyright license agreements in place that will cover the publication of those images, both in print and online. If your documents do contain images we will require you to provide details in writing.

I look forward to receiving your completed form in the meantime. Please just let me know if you have any questions!

Thanks,
[Redacted]

[Redacted]

APS Group
21 Tennant Street
Edinburgh
EH6 5NA

[Redacted]

My normal working hours are 8am-5pm, Monday to Friday

www.theapsgroup.com

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From: [Redacted]
Sent: 05 March 2021 18:36
To: [Redacted]
Cc: [Redacted]
Subject: RE: Proposed publication- week beginning 15th March

Hi [Redacted],

Many thanks. I think we would be looking to work back from when is the latest we could provide it- Friday the 12th would be the absolute earliest I think. We are likely to want to publish the following

That's the cover I had in mind, nothing fancy! I can confirm that this isn't a Covid publication.

Best wishes,

[Redacted]

From: [Redacted]
Sent: 04 March 2021 12:45
To: [Redacted]
Cc: [Redacted]
Subject: RE: Proposed publication- week beginning 15th March

Hi [Redacted],

Thank you for your enquiry. In order to get an indication of what will be feasible in this timescale, please can you let me know when you will be able to provide the final document, as well as the design work you are referring to.

You have mentioned a front cover, are you just looking for our Studio to add the standard SG front cover, such as the one used in [this publication](#). Could you also please clarify if this is a COVID-19 publication?

Once you provide these details, I will get a Publishing Form over to you in order to provide a cost estimate for this, as well as providing an indication of timescales required. Please just let me know if you would like me to give you a call to discuss.

Thanks,
[Redacted]

[Redacted]

APS Group
21 Tennant Street
Edinburgh
EH6 5NA

[Redacted]

My normal working hours are 8am-5pm, Monday to Friday

www.theapsgroup.com

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From: [Redacted]

Sent: 04 March 2021 12:12

To: Scot Gov Enquiries <ScotGovEnquiries@theapsgroup.com>

Cc: [Redacted]

Subject: Proposed publication- week beginning 15th March

Dear Sir or Madam,

I wanted to get in touch to ask for some advice about a forthcoming publication my team is planning. This may need to be published as early as 15th March, and is likely to be finalised quite close to the intended publication date. The document will require some basic web conversion and perhaps a minimum of design work e.g. to add a cover or similar.

Would it be possible to provide some advice on whether this work would be deliverable within the timeframes set out above, and costings for this work.

Best wishes,

[Redacted]

From: [Redacted]
Sent: 10 March 2021 11:49
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: RE: Updated covering paper

Tidied up (removed most of the comments and some of the existing tracks) and left my substantive changes in track for your reference. If you're happy with this as a rough draft could you circulate to key folk? Maybe share with Ewan now and then circulate to others after discussion with Ewan as that might firm a couple of elements up.

Penny Curtis
Deputy Director Elections and FOI
Directorate for Constitution and Cabinet
Scottish Government
2W.02A | St Andrew's House | Regent Road | Edinburgh | EH1 3DG
[Redacted]

From: [Redacted]
Sent: 08 March 2021 15:54
To: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>
Subject: Updated covering paper

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

Sent: 10 March 2021 13:40

To: [Redacted]

Subject: Programme for Government Commitment - Publication of an Independence Referendum Bill - options on timing of the poll - submission to Ministers (A32413922)

Start of a draft. [Redacted]

Thanks

P

[Redacted]

From: [Redacted]

Sent: 10 March 2021 17:45

To: [Redacted] ; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; [Redacted]; [Redacted]; [Redacted]; [Redacted] Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Cc: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; [Redacted]

Subject: Official Sensitive- submission- draft Referendum Bill

Importance: High

Hi everyone,

Please see attached submission, for comment and clearance, on the content and timing of the draft Referendum Bill. We would hope to get this submission to FM and Mr Russell tomorrow afternoon, so if you can let me know of any comments or tracked changes by 1pm tomorrow that would be really helpful.

I've included an eRDM link but in case some people don't have access to the file have attached a word document as well.

[Redacted]

Happy to discuss.

Best wishes,

[Redacted]

From: [Redacted]
Sent: 11 March 2021 08:30
To: [Redacted]; [Redacted]; [Redacted]; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>;
Subject: RE: Official Sensitive- Covering paper for Referendum Bill
Importance: High

Hi [Redacted]

I attach some comments and suggestions for consideration. I have tried to view this as someone who does not know the background, hence some suggestions on areas which may be obvious to us.

Happy to expand if you, or others, have questions.

Best wishes

[Redacted]

[Redacted] | **Elections and Constitution Division** | **Scottish Government** | **Area 2 West** | **St Andrews House** | **Regent Road** | **Edinburgh** | **EH1 3DG** | **Mob:** [Redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

From: [Redacted]
Sent: 10 March 2021 18:24
To: [Redacted]; [Redacted]; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]
Cc: [Redacted]; Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]
Subject: Official Sensitive- Covering paper for Referendum Bill
Importance: High

Hi everyone,

Please see attached, for comment, a first draft of the covering paper for the Referendum Bill.
[Redacted]

If you could provide comments by 2pm tomorrow that would be really helpful.

Best wishes,

[Redacted]

From: [Redacted]

Sent: 11 March 2021 08:44

To: [Redacted]; [Redacted]; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; [Redacted]; [Redacted]; [Redacted]; [Redacted]; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Cc: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]

Subject: RE: Official Sensitive- submission- draft Referendum Bill

Hi [Redacted]

I've added a couple of comments and suggestions to the ERDM version.

Best wishes

[Redacted]

[Redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | [Redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

From: Crawford E (Ewan) <Ewan.Crawford@gov.scot>

Sent: 11 March 2021 09:18

To: [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted] ; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>

Cc: Curtis PS (Penelope) <Penelope.Curtis@gov.scot>; [Redacted]; [Redacted]

Subject: RE: Official Sensitive- submission- draft Referendum Bill

[Redacted]

Ewan

Ewan Crawford

Senior Special Adviser to the First Minister,
EU affairs and the constitution.

[Redacted]

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

Section 29(1)(a) – formulation or development of government policy

An exemption under section 29(1)(a) of FOISA (formulation or development of government policy) applies to some of the information requested because it relates to the formulation of the Scottish Government’s policy on an independence referendum.

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 high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Their candour in doing so will be affected by their assessment of whether the discussions on an independence referendum will be disclosed in the near future, when it may undermine or constrain the Government’s view on that policy while it is still under discussion and development.

Section 30(b)(ii) – free and frank exchange of views for the purposes of deliberation

An exemption under section 30(b)(ii) of FOISA (free and frank exchange of views) applies to some of the information requested. This exemption applies because disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption recognises the need for Ministers and officials to have a private space within which to discuss and explore options before the Scottish Government reaches a settled public view. Disclosing the content of free and frank discussions on the Scottish Government’s deliberations on the content of, materials relating to, and the timing of the publication of a referendum bill will substantially inhibit such discussions in the future, particularly because these discussions relate to a sensitive or controversial issue.

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 Ministers and officials a private space within which to explore and refine the Government’s policy position on the content of, the presentation of, and when to publish a referendum Bill, until the Government as a whole can adopt a policy that is sound and likely to be effective. This private thinking space is essential to enable all options to be properly considered, so that good policy decisions can be taken. Revealing the detail of these discussions 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.

Section 38(1)(b) - personal information

An exemption under section 38(1)(b) of FOISA (personal information) applies to some of the information requested because it is personal data of a third party (i.e. names/contact details of individuals), and disclosing it would contravene the data protection principles in Schedule 1 to the Data Protection Act 1998. 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 36(1) – legal proceedings

An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to some of the information requested because it is legal advice and disclosure would breach legal professional privilege.

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 some public interest in release as part of open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.