

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 6 – Functioning of public bodies

Part 2 - Freedom of information

230. These provisions are being made in consequence of anticipated pressures on the resources of Scottish public authorities for the duration of the coronavirus outbreak. The main purpose is to temporarily extend the existing statutory time periods under which a Scottish public authority (within the meaning of the Freedom of Information (Scotland) Act 2002 (“FOISA”)) must respond to a request for information and to enable the Scottish Information Commissioner (“the Commissioner”) to take matters relating to coronavirus into consideration where there has been a failure by the Scottish public authorities to respond.
231. [Paragraph 3](#) of schedule 6 of the Act modifies sections 10 and 21 of FOISA. Those sections specify maximum time periods within which Scottish public authorities must respond to requests for information and requirements for review. Currently, the maximum period is 20 working days after receipt of the request or requirement. Paragraph 3 instead substitutes a maximum period of 60 working days.
232. Paragraph 3 also deals with a special case. Where requests are made to the Keeper of the Records of Scotland for information transferred by another Scottish public authority, a maximum period of 70 working days is substituted for the current period of 30 working days.
233. Paragraph 4 dis-applies the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 ([S.S.I. 2016/346](#)). These Regulations presently modify the maximum period for independent special schools and grant aided school so that days which are not school days are left out of account in calculating the usual 20 working day period. These schools will be treated in the same way as other Scottish public authorities, with a maximum period of 60 working days to respond.
234. Paragraph 5 confers a power on the Scottish Ministers by direction to specify circumstances in which a Scottish public authority (other than the Scottish Ministers) may extend the 60 working day period.
235. This power can only be exercised where the Scottish Ministers are of the view that doing so will enable Scottish public authorities to better utilise resources to respond to coronavirus. Before they do so, they must consult the Scottish Information Commissioner.
236. Paragraph 5(3) imposes further conditions on the use of the direction-making power. Such a direction must specify the maximum period by which the 60 working day period may be extended (which is not to exceed 40 working days). It must also require a Scottish public authority to notify the applicant of its decision to extend promptly, and in any event before the original 60 working day period expires. Such a notice must also

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

explain the authority's reasons for extending the period, and it must tell the applicant about their right to require the authority to review its decision, or to appeal to the Commissioner, as the case may be.

237. Applicants can apply to the Scottish Information Commissioner for a decision about whether a Scottish public authority has complied with Part 1 of FOISA in dealing with their request for information. Under the current legislation, where the Commissioner decides that an authority has failed to comply with Part 1 of FOISA, the decision notice must specify this and the Commissioner has no discretion to take into account the reasons for the failure.
238. Paragraph 6(2) enables the Commissioner to take into account the impact of coronavirus on the authority where an authority has failed to comply with the timescales set out in section 10(1) and 21(1) of FOISA. If the Commissioner is satisfied that the failure was due to the effect of coronavirus on the authority, and that it was reasonable in all the circumstances for the authority not to comply with the timescales, paragraph 6(2) gives the Commissioner discretion to find that the authority has not failed to comply with Part 1 of FOISA.
239. At present, section 74(1)(a) of FOISA specifies that notices have to be delivered or posted. Paragraph 7 of schedule 6 permits formal notices under FOISA to be given electronically.