

# **CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020**

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## **EXPLANATORY NOTES**

### **DETAIL ABOUT PROVISIONS**

#### *Schedule 4: Other measures in response to coronavirus*

#### **Freedom of information**

158. Paragraph 10 amends schedule 6, Part 2, paragraph 6(2) of the 2020 Act, which confers discretion on the Scottish Information Commissioner to take into account the impact of coronavirus on an authority when determining whether that authority has failed to comply with the timescales set out in sections 10 and 21 of the Freedom of Information (Scotland) Act 2002 (“FOISA”) for complying with requests for information or requirements for review of responses to requests for information. The amendment introduces a further ground for the exercise of that discretion, allowing the Commissioner to consider the effect of the repeal of schedule 6, Part 2, paragraph 3 of the 2020 Act, which reset time periods for compliance with requests and reviews, when determining whether an authority has failed to comply with those relevant timescales. The Commissioner must also consider whether failure to meet the timescale was reasonable in all the circumstances. Paragraph 10 also inserts new paragraph 6(2A) into Part 2 of schedule 6 of the 2020 Act to require that in considering whether a failure was reasonable in all the circumstances, the Commissioner must regard the public interest in FOISA being complied with promptly as the primary consideration.
159. Paragraph 11 repeals schedule 6, Part 2, paragraphs 3, 4 and 5 of the 2020 Act. Paragraph 3 amended sections 10 and 21 of FOISA, to extend the time for compliance with requests for information and for reviews from 20 days to 60 days (and, in the case of the Keeper of the Records of Scotland, from 30 days to 70 days where the information is transferred by another Scottish public authority). Paragraph 4 dis-applied the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016, which make provision about the time limits in relation to grant-aided schools and special independent schools. Paragraph 5 allowed the Scottish Ministers, by direction, to specify circumstances in which a Scottish public authority (other than the Scottish Ministers) may extend, by a maximum of 40 working days, the time for compliance with a request for information.
160. Paragraph 12 requires the Scottish Ministers to lay reports before Parliament every two months on their responses to FOI requests during the period that Part 2 of Schedule 6 of the 2020 Act is in force. Paragraph 12(2) sets out the information to be included in each report.