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The pandemic's impact on public bodies is clear, with some with buildings closed and staff working from home ; others over-stretched by the demands of tackling Covid-19. It was well accepted even by freedom of information advocates that the time allowed to respond to FoI requests would have to be relaxed. But no-one expected that Scotland would be one of the first countries in the world to use emergency legislation to triple the length of time allowed, to 60 days. It has drawn unwelcome international comment. The Index of Censorship has highlighted Scotland and Brazil as making the most far reaching changes to FoI laws (and President Bolsonaro's decree was struck down by the Courts there.)

In the United Kingdom the law has not been changed. The Information Commissioner there has cautioned " These rights are a part of modern life we must not lose" but indicated some flexibility of approach is required, saying she will "continue to safeguard information rights in an empathetic and pragmatic way that reflects the impact of coronavirus." A similar stance has been taken by Commissioners in other regimes such as New Zealand. (However, we should acknowledge that some other governments have suspended or amended the requirements of FoI law.)

The view may be taken that the FoI law in Scotland does not permit the Scottish Information Commissioner (SIC) to deal sympathetically with delays, and would have to find authorities in breach of the time limits to respond to requests no matter the extenuating circumstances. If Scottish Ministers felt this pragmatic approach needed to be underpinned in law it has done so in the Coronavirus (Scotland) Act 2020, enabling the Commissioner to determine that an authority has not failed to comply with FOISA, if the failure was due to the effect of coronavirus. In most circumstances that should be sufficient.

(Consideration could also have been given to particularly hard- pressed authorities to apply to the Commissioner for an extension of time, without the sweeping permission to allow all authorities to take up to 3 months respond.)

The concerns with the extended timescales which allow 60 working days to respond to FoI requests and further 60 working days to respond to a request for review are many, such as :

- Despite the SIC reminding authorities that the law still requires them to respond promptly to requests, the reality is that many officials regarded meeting the previous 20 day limit as sufficient to be in compliance with their obligations. They may take the view that the new Act allows them to do the same with the extension to 60 days
- Once information is disclosed it may be considerably out-of- date. The law is such that the requester is only entitled to the information held by the authority at the time of request. It may be well over 6 months old by the time it is disclosed.
- The new time limits do not apply to requests for environmental information, which is dealt with under the Environmental Information (Scotland) Regulations (EIRs) , for which 20 working days is still the required time for compliance. Authorities will have to distinguish between environmental and non- environmental requests and make sure to deal with them within different time limits accordingly. For central and local

government this could be onerous. The statistics held by the SIC show that in 2019, 17% of requests to Scottish Government and its agencies were dealt with under the EIRs and this proportion rises markedly for councils - nearly 40% of requests to City of Edinburgh Council are for environmental information; for Scottish Borders Council the figure is 42% , for Aberdeen City it is 32%.

At this time of unprecedented action by Government which impacts on family life, livelihoods and public services there has to be a recognition that people will want information in as close to real time as possible. As the International Conference of Information Commissioners, which supports a pragmatic approach, has said “The public’s right to access information about such decisions is vital.”

<https://www.indexoncensorship.org/2020/05/how-foi-laws-are-being-rewritten-during-the-covid-19-crisis/>

<https://verfassungsblog.de/authoritarianism-without-emergency-powers-brazil-under-covid-19/>

<https://www.informationcommissioners.org/covid-19>