

Report to:	QSMTM
Report by:	Margaret Keyse, Head of Enforcement
Meeting Date:	11 May 2022
Subject/ Title: VC167606	Review of key documents: <ul style="list-style-type: none"> • C2 Coronavirus (Scotland) Act 2020: Determining the effects of the coronavirus on an authority's ability to respond to requests (VC140244) • C2 Coronavirus (Scotland) Act 2020: Determining the effects of the coronavirus on requests responded to between 7 April and 26 May 2020 (VC140242)
Attached Papers (title and VC no)	n/a

Purpose of report

1. This report recommends that two documents be removed from the Register of Key Documents.

Recommendation and actions

2. I recommend that:
 - (i) *C2 Coronavirus (Scotland) Act 2020: Determining the effects of the coronavirus on an authority's ability to respond to requests (VC140244)* and *C2 Coronavirus (Scotland) Act 2020: Determining the effects of the coronavirus on requests responded to between 7 April and 26 May 2020 (VC140242)* are removed from the Register of Key Documents; and
 - (ii) this report is published in line with the "Publication" section below.

Executive summary

3. After the country went into lockdown in March 2020, emergency legislation was introduced which affected the timescales in the Freedom of Information (Scotland) Act 2002 (FOISA). For example:
 - (i) in April 2020, the Coronavirus (Scotland) Act 2020 extended the maximum timescale for public authorities to respond to requests and requests for review from 20 to 60 working days – although the duty to respond "promptly" remained.
 - (ii) in May 2020, the Coronavirus (Scotland) (No.2) Act 2020 returned the maximum timescale for responding to requests and requests for review to 20 working days. At the same time, the Commissioner was given the power to find that a late response was not a breach of FOISA if the response was late because (i) of the effects of the coronavirus or the authority was working to the 60 working day timescale in place between 7 April and 27 May 2020 and (ii) the delay was reasonable.
 - (iii) in October 2021, the Coronavirus (Extension and Expiry) (Scotland) Act 2021 removed the Commissioner's power to find that a late response did not breach FOISA if the information request in question was made on or before 30 September 2021.

4. We published a number of pieces of guidance to deal with the changes to FOISA. The documents which are the subject of this committee report were prepared to provide public authorities with guidance on how the Commissioner would interpret “promptly” during the pandemic and on the types of information he would expect public authorities to provide him with if they wished to argue that, despite a response being late, there had been no breach of FOISA.
5. Both documents were approved in October 2020 and were due to undergo a planned review in September 2021. As I started work on the review, I concluded that neither document needed to be retained as a key document – the guidance deals with legislation which is no longer in force and has no practical effect for the Commissioner, public authorities or requesters. Retaining the guidance as key documents might lead public authorities and requesters to believe that the guidance remained current.

Risk impact

6. Given that this guidance is out of date, there is a risk that, if we keep the documents as key documents, public authorities and requesters may mistakenly believe that the guidance remains relevant.

Equalities impact

7. None

Privacy impact

8. None

Resources impact

9. None

Operational/ strategic plan impact

10. None

Records management impact (including any key documents actions)

11. This CR relates to two key documents. If the recommendation in this report is approved, the documents will be removed from the Register of Key Documents.
12. The key documents previously formed part of our website’s Covid-19 Information Hub. However, the Hub has now been removed from the website.

Consultation and Communication

13. The Acting Head of Policy and Information has been consulted in relation to the recommendation in this committee report.

Publication

14. I recommend that this committee report is published in full.