



Time for Compliance Regulations

Commissioner's response to the above consultation by Scottish Ministers

1. Below is the Commissioner's response to a Scottish Government consultation on draft regulations. The consultation can be viewed at the following link: [The Freedom of Information \(Scotland\) Act 2002 \(Time for Compliance\) Regulations 2016](#)
2. The Commissioner's response was submitted on 4 April 2016. Below is the response submitted via Citizen Space.

Introduction

Are you responding as an individual or an organisation?

Organisation

What is your name or your organisation's name?

Scottish Information Commissioner

What is your email address?

enquiries@itspublicknowledge.info

The Scottish Government generally seeks to publish responses to a consultation, in summary and where possible in detail. We would like your permission to publish:

Your response along with your full name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

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1 Do you agree that the time available for grant-aided and independent special schools to respond to FOI requests - to allow for school holiday periods - should be extended (up to a maximum of not later than 60 working days after receipt of the request)?

Yes

You may wish to provide information in support of your view:

The Scottish Information Commissioner enforces the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). She recognises the importance of requesters being given the information they are entitled to as quickly as possible – often, the importance of information can reduce over time. However, the Commissioner also recognises the practical difficulties for grant-aided schools and independent special schools of responding to requests during the school holidays. She therefore agrees that the time available for responding to requests should be extended in line with the draft regulations.

The Commissioner also notes that this extension will remain a “backstop” for the schools involved. There will still be a duty on the schools, in line with section 10(1) and section 21(1) of FOISA, to comply “promptly” with a request or request for review.

2 Do you agree that the time available for grant-aided and independent special schools to respond to FOI requests for a review - to allow for school holiday periods - should be extended (up to a maximum of not later than 60 working days after receipt of the request for review)?

Yes

You may wish to provide information in support of your view. :

For the reasons set out above in response to question 1, the Commissioner agrees with the extension in the draft regulations.

Please provide any further comments you wish to make in respect of these proposals and the terms of the draft regulations at Annex A. :

There appear to be three typographical errors in the draft regulations:

- The word “fall” in regulation 2(1)(b) should read “falls”;
- The numbering in regulation 2 does not appear to be correct. For example, the regulation has two separate regulation 2(1)(b)’s; and
- The reference to section 21(6) in the “second” regulation 2(1)(b) (“Where this regulation applies ...) should be to section 21(1).

As noted in the consultation paper, the schools in question will automatically become subject to the requirements of the EIRs on 1 September 2016. The EIRs are based on an EU Directive – Directive 2003/4/EC on public access to environmental information. The Directive gives public authorities a maximum of one month to respond to a request (two months if the request is complex and voluminous) and a maximum of one month to respond to a request for review. The draft Regulations will not have any effect on the timescales in the EIRs. This should be made clear to the schools in question.

Contact us

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info