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Education and Skills Committee

Remit: To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills.



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Report

1. At its meeting on 5 October 2016, the Committee considered the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 [draft].
2. In advance of the meeting, the Minister for Parliamentary Business provided a letter detailing further information. This letter is attached as Annexe A.
3. Joe Fitzpatrick, Minister for Parliamentary Business, moved—

S5M-01751—That the Education and Skills Committee recommends that the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 [draft] be approved.
4. The motion was agreed to.

Annexe A – Correspondence from the Scottish Government

4th October 2016

Dear James

Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016

Ahead of the Education and Skills Committee scrutiny of the above Regulations, I am writing to you to provide some further information about the text (currently at draft stage) we propose to insert into the Code of Practice issued under Section 60 of the Freedom of Information (Scotland) Act 2002 (FOISA).

The Section 60 Code provides guidance for Scottish public authorities on complying with their responsibilities under FOISA. Revisions to the Code are made in consultation with the Scottish Information Commissioner.

The purpose of the new text is to emphasise the existing statutory duty – for every public authority subject to FOISA - to respond to information requests promptly. In addition, to take into consideration concerns about allowing extended response timescales for grant-aided and independent special schools, further text requires these schools as ‘good practice’ to respond to requests if staff with appropriate skills, knowledge and level of authority are available, even if the Regulations apply.

The proposed text forms the **Annex** to this letter.

I hope this is helpful for the Committee.

JOE FITZPATRICK

ANNEX

Proposed new text to be inserted in the Section 60 Code of Practice

Duty to respond promptly to a request

Under sections 10(1) and 21(1) of FOISA all public authorities are required to respond 'promptly' to a request or review (and, in any case, within a statutory 20 working days).

Requests and reviews received by grant-aided and independent special schools are also subject to the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016. The Regulations allow any working day which is not also a 'school day' to be disregarded for the purposes of the statutory 20 working day deadline for complying with an FOI request or review made to such schools.

The purpose of the Regulations is to allow those specific schools sufficient time to respond to FOI requests and reviews, taking into account school holiday periods when the school maybe closed and/or staff are not available. However, the Regulations do not relieve those schools of their obligation to reply to a request or review 'promptly'.

Therefore, even on 'non-working days' (for the purposes of FOISA and the Regulations), if staff (with the appropriate skills, knowledge and level of authority) are working in a school, it is good practice to work as normal on any FOI requests or reviews to ensure that responses are issued promptly.

