

Coronavirus (Scotland) Act 2020 and Coronavirus (Scotland) (No.2) Act - Guidance to Scottish Government Stakeholders

Introduction

1. This short guidance note is intended to give central and local government and public bodies in Scotland an overview of key measures contained within the Coronavirus (Scotland) Act 2020, which came into force on Tuesday 7 April, and the Coronavirus (Scotland) (No.2) Act, which came into force on Wednesday 27 May.
2. This is not a comprehensive or in depth overview of the provisions in the Acts. Rather it is intended to highlight key changes made by the Acts, and to provide a short guide to public authorities regarding how the new legislation may affect key areas of business.
3. The focus of this guidance is on those provisions with effect across the public sector in Scotland, for example in relation to the temporary changes which have been made to reporting and publication requirements, and to Freedom of Information timescales. However, Annex A provides a fuller list of measures contained within the Acts. Annex B summarises guidance in key areas and signposts contacts for further information.

Background

4. The Coronavirus (Scotland) Bill completed all stages of the legislative process in the Scottish Parliament on Wednesday 1 April and the Coronavirus (Scotland) (No.2) Bill completed its parliamentary passage on Wednesday 20 April. Both Acts came into force on the day after they received Royal Assent.
5. The Acts are intended to provide relief during the coronavirus outbreak, and the disruption caused by the outbreak. The Scottish Government's clear commitment is that none of the provisions will last longer than is necessary and that the provisions are proportionate to deal with the outbreak and its effects.
6. Part 1 of the Acts (sections 1 to 8 and linked schedules) were originally due to expire on 30 September 2020. However, that period can be extended by regulations approved by the Scottish Parliament if required: first to 31 March 2021, and then to 30 September 2021. It cannot be extended longer than that. Regulations to extend Part 1 of both Acts to 31 March 2021¹ were laid by the Scottish Government, along with a supporting Statement of Reasons² for seeking to extend the legislation, on 24 August and approved by the Scottish Parliament on 23 September. At the same time as the extension regulations, regulations were also made to expire a number of provisions which were

¹ <https://www.legislation.gov.uk/ssi/2020/299/introduction/made>

² <https://www.gov.scot/publications/proposed-extension-coronavirus-scotland-act-2020-coronavirus-scotland-no-2-act-2020-statement-reasons/>

considered to be no longer needed beyond 30 September and these regulations came into force on 29 September³.

7. The Acts provide for dealing with the situation where any of the provisions are considered to no longer be needed earlier than the dates set out above. Under section 11, provisions in Part 1 of the Acts can be suspended and revived by the Scottish Ministers, if they are temporarily no longer required but there is reason to believe they may become required again. Regulations coming into force on 30 September⁴ suspend schedule 3, Part 2, paragraphs 11(2) and 11(3) of the first Scottish Act which relate to some of the Adults With Incapacity provisions, and separate regulations coming into force on 1 October⁵ suspend schedule 7, paragraphs 32 and 33 of the first Scottish Act which relates to muirburn. These provisions will therefore be covered by the extension of Part 1 of both Acts to 31 March 2021 but will also be suspended.
8. Alternatively, if satisfied that any provisions in Part 1 of the Acts are unnecessary and will no longer be required, the Scottish Ministers can cause them to expire early under section 13. The following paragraphs have been expired under the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 coming into force on 29 September:

Coronavirus (Scotland) Act 2020:

- **Schedule 3** – Children and vulnerable adults – Part 1 – Children:
Paragraph 6
- **Schedule 3** - Children and vulnerable adults – Part 2 – Vulnerable adults:
Paragraph 11(1)
- **Schedule 7** - Social security: **Paragraphs 1(a), 2, 3 and 4 ***

Coronavirus (Scotland) (No.2) Act 2020:

- **Schedule 3, paragraph 1**: Reports, etc. under the Climate Change (Scotland) Act 2009 *
- **Schedule 3, paragraph 2**: Accounts of registered social landlords *
- **Schedule 3, paragraph 3**: Accounts under the Public Finance and Accountability (Scotland) Act 2000 *
- **Schedule 3, paragraph 4**: Housing (Scotland) Act 1987: statement under section 33B *
- **Schedule 4, paragraph 1**: UEFA European Championship *
- **Schedule 4, paragraph 6**: Land and Buildings Transaction Tax: additional amount *
- **Schedule 4, paragraphs 7 and 8**: Non-Domestic Rates relief *

9. Provisions marked with an * in the above list are provisions which made amendments to other legislation, and now no longer need to remain in force. The expiry of these provisions does not affect the substantive

³ <https://www.legislation.gov.uk/ssi/2020/249/contents/made>

⁴ <https://www.legislation.gov.uk/ssi/2020/267/contents/made>

⁵ <https://www.legislation.gov.uk/ssi/2020/260/introduction/made>

amendments made to other legislation by these provisions - the effect of their expiry is just to remove the spent provisions in each of the Scottish Acts.

Key areas of interest for providers of public services

10. The Act contains measures designed to ease the pressures of day to day business for public services - recognising the severe strain which may be placed on their resources during the current emergency. Two areas in particular are likely to be of relevance across the public sector in Scotland:

- Duties in respect of reports and other documents
- Amendments to the Freedom of Information (Scotland) Act 2002

Duties in respect of reports and other documents.

11. Provisions in Schedule 6, Part 3 of the first Act allow the Scottish Ministers or Scottish public authorities to postpone publishing reports or laying reports before the Scottish Parliament if they are of the view that doing so is likely to impede their ability to take effective action to prevent, protect against, delay or otherwise control the incidence or transmission of coronavirus.

12. This applies to statutory duties which are within the legislative competence of the Scottish Parliament and which require the Scottish Ministers or a Scottish public authority to publish, or to publish and lay before the Scottish Parliament, reports (and any other associated documents) in connection with the exercise of their functions.

13. Where Scottish Ministers or Scottish public authorities decide to postpone complying with any such duty, they must publish a statement to that effect either on or before the date by which the report is due or as soon as reasonably practicable after the date. Where the Scottish Ministers or a Scottish public authority have made a decision to postpone complying with a duty, they must comply with the duty as soon as reasonably practicable.

14. The postponement of compliance does not relate to any duties contained in the Coronavirus (Scotland) Act, the Coronavirus (Scotland) (No.2) Act or to accounts or associated documents required under section 19 or 20 of the Public Finance and Accountability (Scotland) Act 2000. Ministers are able to modify by regulations the effect of the Public Finance and Accountability (Scotland) Act 2000 as it applies to accounts that are required under section 19 or 20 of that Act. This provision is contained in Schedule 6, part 5 paragraph 16 of the first Act.

15. It remains essential, however, that the Scottish Government and its sponsored bodies are able to report to the Scottish Parliament on the stewardship of our resources. These activities are continuing in respect of the financial year 2019-20 but the pace has been slowed. Work is continuing to ensure annual accounts procedures can be completed, subject to agreement with audit authorities. This will take into account the need for consistency of approach across all public bodies and may require engagement with

Parliament in advance of any amendments which might affect this important accountability.

16. “Scottish public authority” as defined in the Scotland Act 1998 means any public body (except the Parliamentary Corporation), public office or holder of such an office whose functions (in each case) are exercisable only in or as regards Scotland.

Publication of documents

17. Similarly, there are provisions in a wide range of legislation, primary and secondary, that require public bodies to publish certain documents in a particular way or to make them available for physical inspection at a specified location. Where libraries and offices are closed to the public due to the coronavirus outbreak, and there may be restrictions on travel, it will not be possible for organisations to comply with these requirements. It is important that public bodies are not prevented from carrying out their functions by an inability to comply with such requirements, but also that information about the exercise of public functions and decision-making continues to be as widely available as possible in the circumstances.
18. Schedule 6, paragraph 9 of the first Act enables public bodies to make alternative arrangements to publish documents online, where necessary. It applies to any statutory duty that is within the legislative competence of the Scottish Parliament to amend, that requires the Scottish Ministers or a Scottish Public authority to:
 - Publish or publicise a document;
 - Lay a document before the Scottish Parliament;
 - Give notice of where a document may be inspected; or
 - Make a document available for inspection in a particular manner.
19. If the public body considers that complying with the duty may give rise to a significant risk of transmission of the virus (for example by opening offices to the public) or is likely to be ineffective or inappropriate due to restrictions in place (for example, placing a copy of a document in a library that is closed), they may decide not to comply with the duty. Instead they must, if possible, publish, give notice or make the document available by electronic means. If they decide this is not possible, they must publish a statement to that effect.
20. If the duty is accompanied by a requirement to make a statement to the Scottish Parliament about the document by a certain date, it is sufficient for that statement to be made as soon as reasonably practicable.
21. Under paragraph 10, where a public body has decided not to comply with a duty, once there is no longer a significant risk of the transmission of the virus, they must then comply with the duty – ie. publish the document, or publish a statement that they are not complying and why. This may be, for example, that they consider the electronic publication was sufficient, or that the

information is no longer relevant. If the duty was to lay a document before the Scottish Parliament, they must do that as soon as reasonably practicable.

22. If you wish to discuss the use of these provisions you should speak to your regular contact Division within the Scottish Government in the first instance, since they will likely be best placed to explore any issues with you, in the context of your area of business. Some additional useful **contacts** may be:

- Public Bodies Unit – Ian Thomson, Email: Ian.Thomson@gov.scot
- Local Government and Analytical Services Division – Stuart Johnston, Email: Stuart.Johnston@gov.scot
- Office of the Chief Executive NHS Scotland – Laurie Whyte, Email: Laurie.Whyte@gov.scot
- Courts and Tribunals Branch – Ryan McRobert, Email: Ryan.McRobert@gov.scot

Amendments to the Freedom of Information (Scotland) Act 2002

23. The Coronavirus (Scotland) Act made a number of amendments to the Freedom of Information (Scotland) Act (FOISA) to give public authorities some additional breathing space when responding to requests under FOISA, in recognition of pressures associated with the coronavirus outbreak.

24. A number of these changes were repealed by the Coronavirus (Scotland) (No.2) Act. This included a reversal of the previous extension to statutory deadlines for responses and reviews, which have returned to their original 20 working days.

The law as it now stands

25. Two measures have been left in place by the Parliament, in recognition of the particular pressures on public services as a consequence of the coronavirus outbreak. These measures:

- enable the Commissioner, having regard to the public interest, to take into account the effect of coronavirus on authorities when deciding appeals where authorities have failed to comply with the timescales for responding. This now explicitly includes the power to take into account the impact of the reversal of the previous extension of deadlines.
- enable authorities and the Commissioner to issue formal notices by electronic means.

Further information about what the changes mean for Scottish public authorities

26. The [Scottish Information Commissioner's website](#) provides guidance for the public and for Scottish public authorities on FOI during the coronavirus outbreak.

27. The Scottish Government's Freedom of Information Unit leads on FOI policy issues. For further information about the changes in the Act, contact Michael Birrell, Freedom of Information Unit, Scottish Government. Email: Michael.Birrell@gov.scot

Sector specific measures included in the Acts

28. Besides these general provisions, designed to ease pressure on all public services, the two Acts contain a large number of measures to address specific challenges and issues arising from the national emergency affecting various parts of Scottish society and the delivery of public services.
29. Annex A provides a full summary of measures in both Acts. Annex B provides a summary of Scottish Government guidance in relation to specific measures and contact information for Scottish Government colleagues who may be able to provide further information.

Ongoing review of the measures

Expiry of provisions of the Acts

30. There could be issues that will need to be resolved when any of the provisions expire. For example, where the Acts extend the deadline by which an application has to be made, what happens to existing applications when the deadlines are extended?
31. Section 16 of the Acts allow the Scottish Ministers to set out what should happen in such situations, by making incidental, supplementary, consequential, transitional, transitory or saving provision to deal with the legal consequences of provisions of the Acts expiring.

Review and reporting on the Acts

32. Section 15 of the Coronavirus (Scotland) Act and Section 12 of the Coronavirus (Scotland) (No.2) Act require Scottish Ministers to produce a report on the Acts every two months. That report must set out the results of a review by the Scottish Ministers of whether the provisions in both Acts remain necessary.
33. The report must also set out how any powers in the Acts have been used and whether the Scottish Ministers consider the status of the provisions to continue to be appropriate.
34. Under section 15, the first report was due following the end of the first reporting period on 31 May, and under section 12 the second report was due following the end of the second reporting period on 31 July. The third report is due following the end of the third reporting period on 30 September.
35. From the second reporting period, section 13 of the Coronavirus (Scotland) (No.2) Act requires that in undertaking these reviews Ministers must take

account of any information about the nature and number of incidents of domestic abuse occurring during the reporting period to which the review relates which are either given to them, or published, by the Scottish Police Authority, or the chief constable of Police Scotland, and explain in the report how the information was taken account of.

36. Section 14 of the Coronavirus (Scotland) (No.2) Act also requires Ministers to review and report on all Scottish statutory instruments made by Ministers where the main purpose is to make provision for a reason relating to coronavirus, and prepare a report on that review setting out the status of the instrument and a statement that Ministers are satisfied that this continues to be appropriate. These reports are to be undertaken every two months, with the first one due following the end of the first reporting period on 31 July. SSIs are excepted from this review process where they are made under the powers of the Scottish Coronavirus Acts or the UK Coronavirus Act 2020, as they are covered by the separate reporting arrangements applying to those Acts.

Input required from local authorities and public bodies

37. In implementing, reviewing and reporting on the Acts, the Scottish Ministers will rely on the perspective of, and information provided by, local authorities and public bodies.
38. Local authorities and public bodies should keep their Scottish Government contacts informed:
- if they have any concerns about the provisions of the Acts.
 - if they consider that the provisions of the Acts are not, or may shortly become, unnecessary or disproportionate.
 - if they think that there may be the need to suspend any provisions of the Acts temporarily.
 - if they have concerns about the practical impact of the expiry of any provisions in the Acts.
39. Local authorities and public bodies' Scottish Government contacts will, in turn, keep them informed of how the Scottish Government is going about reviewing and reporting on the provisions of the Acts, and of its plans for the Acts' expiry.
40. For further information about the provisions of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 as a whole, contact the Coronavirus Legislation Coordination mailbox: Covid.Leg@gov.scot

MEASURES IN THE CORONAVIRUS (SCOTLAND) ACT 2020Measures to ensure that renters are protected while confined to their homes

Changes across both private and social rented sectors:
(see also Annex B)

1. Temporarily extend, whilst the Act is in force, the notice to leave period or notice of proceedings for possession period landlords must apply when beginning the process for ending a tenancy across all grounds – except in relation to the tenant abandonment ground (or where suitable alternative accommodation is being provided), in relation to anti-social behaviour and criminality and in the case of assured tenancies and regulated tenancies where there is suitable alternative accommodation for the tenant.
2. The new notice to leave period would be for 6 months, except where the landlord requires the property to live in, where it will be 3 months, and in relation to grounds on antisocial behaviour and criminal behaviour, where it will revert back to 28 days.
3. Temporarily make all grounds for repossession in the private rented sector discretionary so that the Tribunal – once operational again – can consider the full facts of the case when deciding whether to grant an eviction.
4. That Ministers will have a new power to adjust these notice periods (but not above 6 months) to adapt to changing circumstances during the lifespan of the Act should that be required.

Measures to alleviate pressures on public services, business and consumers

1. Extended protection for those in debt from creditor enforcement action. (see Annex B)
2. Suspending timescales set out in the Social Security (Scotland) Act (for example deadlines by which clients are required to apply for assistance, request a redetermination and bring appeals), and extending the period allowed for Ministers to make a redetermination before a client becomes entitled to appeal to the Tribunal. (see Annex B)
3. Giving protection against eviction to those with commercial leases. (see Annex B)
4. Allowing local authorities to exclude people from meetings where required by statute (on protecting public health grounds). (see Annex B)
5. Delaying ballots for Business Improvement Districts and possibly extending their lifespan. (see Annex B)
6. Suspension of time limits in the Anatomy Act to relieve pressure on anatomy schools and cremation authorities. (see Annex B)
7. Easement of local authority requirements under s.13ZA of the Social Work (Scotland) Act in order to provide community care services, including moving the adult to residential accommodation, to protect vulnerable adults - this provision will only come into force by regulations when and if Ministers approve its use, which will be strictly only when evidenced as being absolutely necessary. (see Annex B)

8. Amendments to extension of time limits in Adults with Incapacity (Scotland) Act to help protect vulnerable adults. (see Annex B)
9. Temporary adjustment of FOI to allow public bodies to devote additional resources to COVID-19 response. (see main note)
10. Allowing documents made public for inspection to be published on the internet rather than in physical locations e.g. a local authority office or library. (see main note)
11. Extend the duration of planning permission for applications which are due to expire in the next 6 months. (see Annex B)
12. Changes to alcohol and civic government licensing legislation to provide necessary flexibility for Licensing Boards, licensing authorities, applicants and other parties. (see Annex B)
13. Extend the period of validity of advance notices and allow electronic communication of applications to the property registers. (see Annex B)
14. End the 2019/20 muirburn season early and retain the facility to suspend muirburn for the period the Act is in force (see Annex B) whilst allowing muirburn to commence with the 2020/21 season using a separate SSI.

Measures to ensure the justice system is able to deliver essential services

A number of measures designed to allow social distancing policies to be followed in essential court business (for example, by allowing remote appearances in court), to allow official resources to be deployed more flexibly during the outbreak (for example, by lifting some requirements on authorities to do with certain types of court order), and to respond to the fact that much criminal business will have to be paused or slowed (for example, by relaxing timescales).

1. Extension of certain statutory time limits in criminal proceedings
2. An additional exception to the rule that hearsay evidence is inadmissible in criminal proceedings
3. Sheriffs and summary sheriffs to have Scotland-wide jurisdiction, <u>only</u> for first appearances from police custody and any continuation of those proceedings up until a not guilty plea is tendered or full committal (in indictment cases).
4. Changes to Parole arrangements (see Annex B)
5. Powers to allow Ministers to seek Parliament's approval for the emergency release of prisoners, consistent with ensuring public safety (see Annex B)
6. Enabling court and tribunal attendance by electronic means.
7. Increased use of electronic signatures and electronic transmission of documents.
8. Extending time limits for unpaid work in Community Payback Orders by 12 months; enabling the postponement of certain community orders; and enabling the variation of certain community orders. (see Annex B)
9. Expand alternative to prosecution (increase maximum value of a fiscal fine)
10. More flexibility for children's panel composition (see Annex B)
11. Relax timescales for child assessment orders (see Annex B)
12. Suspend 2 nd day hearing in child protection orders (see Annex B)
13. Dispensing with need for personal appearance at children's hearings (see Annex B)
14. Preventing 2011 Act Orders from lapsing (see Annex B)
15. Extending maximum periods of interim orders in respect of children (see Annex B)

16.	Removing maximum limit on foster placements (<i>see Annex B</i>)
17.	Relaxing timescales for kinship placement reviews (<i>see Annex B</i>)
18.	Allowing interim legal aid payments to be made to solicitors (<i>see Annex B</i>)

General measures

- Sun-setting the Act's provisions at six months, with extension for two further periods of six months possibly by regulations, subject to the approval of the Scottish Parliament.
- Requiring Scottish Ministers to report on the use of the Act and its powers every two months.
- Relaxing duties on Scottish Ministers and other public bodies to produce reports while the Act is operating.
- Allowing SSIs under the affirmative procedure to be 'made affirmative' (i.e. still require Parliament's approval but can come into force early) while the Act is operating.

MEASURES IN THE CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020

Protection of the individual

1.	Allowing student residential tenancies to be terminated with a reduced minimum notice period (see <i>Annex B</i>)
2.	Introducing private landlord pre-action protocols to provide for: <ul style="list-style-type: none">• a regulation-making power, to be in place for so long as the Act is in force, for Scottish Ministers to make provision about pre-action requirements private landlords should comply with when seeking to end a private tenancy due to rent arrears where all, or part of the arrears, are a result of the impact of the Covid-19 pandemic; and• for the First-tier Tribunal for Scotland (Housing and Property Chamber) to take account of the extent to which a landlord has complied with the pre-action requirements provided for by regulation in deciding whether it is reasonable to grant an eviction order. (see <i>Annex B</i>)
3.	Providing an additional payment of Carer's Allowance Supplement (see <i>Annex B</i>)
4.	Creating a social care staff support fund (see <i>Annex B</i>)
5.	Adjustments to fees and thresholds to assist those facing bankruptcy (see <i>Annex B</i>)
6.	Dispensing with need for named person nominations to be witnessed by a prescribed person when being signed under Mental Health law (see <i>Annex B</i>)
7.	Providing emergency powers to direct care home service or apply for emergency intervention orders (see <i>Annex B</i>)
8.	Providing powers to purchase care home services and care at home providers (see <i>Annex B</i>)
9.	Requiring details of care home inspections and deaths in care homes to be reported regularly (see <i>Annex B</i>)
10.	Requiring steps to be taken, as considered necessary, to ensure marriages civil partnerships continue to be available (see <i>Annex B</i>)

Operation of the justice system

1.	Ensuring the criminal justice system can continue to function effectively (see <i>Annex B</i>)
2.	Providing further time for the payment of confiscation orders under the Proceeds of Crime Act 2002 (see <i>Annex B</i>)
3.	Allowing documents to be displayed online rather than on the walls of court

Reports, accounts and other documents

1.	Adjusting the deadline for the Scottish Government to have established a national Nitrogen Balance Sheet and for the Citizens Assembly on Climate Change to have concluded its deliberations
2.	Extending the time period for accounts of registered social landlords to be submitted (see <i>Annex B</i>)

3.	Amending previous provisions relating to the Public Finance and Accountability (Scotland) Act 2000
4.	Extending, by 6 months, the deadline for Scottish Ministers to publish a statement on exercising their power to modify local connection, as required under section 33B(1) of the Housing (Scotland) Act 1987 (<i>see Annex B</i>)

Other measures in response to coronavirus

1.	Amendments to reflect the rescheduling of the UEFA European Championship, previously due to take place in 2020
2.	Extending the time period for consent of listed buildings and conservation areas (<i>see Annex B</i>)
3.	Allowing the electronic signing and transmission of Registers kept by the Keeper of the Registers of Scotland (<i>see Annex B</i>)
4.	Allowing for the electronic giving of notices by the Care Inspectorate (<i>see Annex B</i>)
5.	Extending the time period for which the Additional Dwellings Supplement can be reclaimed: Land and buildings transaction tax (<i>see Annex B</i>)
6.	Allow non-domestic rates relief to be remitted for the whole of 2020-21 and adding the category of newspaper offices to the Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 (S.S.I. 2020/101) (<i>see Annex B</i>)
7.	Allowing Scottish notaries public, solicitors and advocates the ability to execute remotely (<i>see Annex B</i>)
8.	Adjustments to FOI in response to changes made in the Coronavirus (Scotland) Act 2020 (<i>see main note</i>)
9.	Requiring Scottish Ministers to report on low emission zones (<i>see Annex B</i>)
10.	Exempting dwellings recently vacated by students from Council Tax payments (<i>see Annex B</i>)
11.	Traffic regulation (<i>see Annex B</i>)
12.	Restricting the issuing of grants to businesses connected to tax havens (<i>see Annex B</i>)

General measures

- Sun-setting the Act's provisions on 30 September 2020, with extension for two periods of six months possibly by regulations, subject to the approval of the Scottish Parliament.
- Requiring Scottish Ministers to report on the use of the Act and its powers every two months.
- Allowing SSIs under the affirmative procedure to be 'made affirmative' (i.e. still require Parliament's approval but can come into force early) while the Act is operating.

CORONAVIRUS (SCOTLAND) ACT 2020 - GUIDANCE ON SECTOR-SPECIFIC MEASURES

Measures to ensure that renters are protected while confined to their homes

Preventing Evictions

To protect private and social rented tenants being evicted from their home during the Covid-19 pandemic, the provisions within schedule 1 of the Act:

- temporarily extend the notice period before the process for ending a tenancy can begin for up to 6 months, except where a landlord is looking to regain possession of a property where it has been abandoned by a tenant, in relation to anti-social behaviour or criminality eviction grounds and, in the case of assured tenancies and regulated tenancies, where there is suitable alternative accommodation for the tenant;
- the new notice to leave period would be for 6 months, except where the landlord requires the property to live in, where it will be 3 months and in relation to grounds on antisocial behaviour and criminal behaviour where it will revert back to 28 days;
- in a limited number of Short Scottish Secure Tenancies cases which are coming to an end, and where the landlord wishes to end the tenancy, the notice period will remain at 2 months;
- temporarily change all private rented sector repossession cases going before the First-tier Tribunal (Housing and Property Chamber) to be considered on a discretionary basis – bringing it in line with how a Sheriff considers social rented sector repossession cases. This will ensure the Tribunal considers the reasonableness of making an eviction order during the outbreak;
- make provision for Scottish Ministers to extend the period these changes apply to and gives them the necessary flexibility in relation to the application of these provisions to respond to the uncertainty around the duration of the pandemic;
- the extended notice periods apply to notices which are issued after the Act came into force on 7 April 2020.

The Act ensures that tenants in the rented sector have additional protection from eviction in the current uncertainty relating to the coronavirus pandemic. The changes support tenants to be secure in their homes and will also ensure that they have time to apply for and receive the available support so they can pay their bills in the short term and, if necessary, to give them time to plan for the longer term over this unprecedented crisis.

Eviction notice periods

The changes made to the eviction notice periods will affect the following tenancies:

- the Private Residential Tenancy;
- the Scottish Secure Tenancy and Short Scottish Secure Tenancy;
- the Assured and Short Assured Tenancies; and
- regulated tenancies.

In recognition of how fast moving the impacts of this pandemic are, there are provisions within the Act providing Scottish Ministers with the flexibility to modify the notice period for all eviction grounds which are set at 3 months, to a maximum of 6 months. For example, if a high number of landlords are issuing notices using the ground that they intend to move back into the property and there was evidence the ground was being misused, Scottish Ministers are able to take action to increase the notice period for that ground to a maximum of 6 months.

Eviction grounds being made discretionary

If a private landlord serves a notice to leave and the tenant chooses not to leave the property, the landlord must go to the First-tier Tribunal (Housing and Property Chamber) for an eviction order. Under normal tenancy legislation, many of the eviction grounds were mandatory, meaning a Tribunal had to grant an eviction order if all the requirements were met.

This legislation amends all the eviction grounds a private landlord can use to regain possession through to make them all discretionary. This change ensures that the Tribunal – once operational again – will be able to use discretion and take all factors relating to the impact of Covid-19 has had on both the landlord and tenant, into account before deciding whether to issue an eviction order or not.

Power to extend the period the temporary changes are in force

The changes are in force until 30 March 2021. Alongside being able to amend the notice periods that apply up to a maximum of 6 months, Scottish Ministers also have the power to extend the changes for a further 6 month period. This gives Scottish Ministers the necessary flexibility to adapt to the uncertainty caused by the pandemic

Error in notices

Where a landlord has completed a notice incorrectly by including the wrong notice period, the notice will be valid but only in accordance with the correct notice period. This will ensure that if a landlord accidentally includes the notice periods that would have applied before this legislative change, they do not have to start the process again. The process can continue, but only in line with the relevant extended notice period.

Contact: Social Rented Sector - Michael Boal, Social Housing Charter & Regulation Manager, Scottish Government, Email: Michael.Boal@gov.scot

Pauline Brice, Housing Policy Manager, Scottish Government, Email:

Pauline.Brice@gov.scot

Private Rented Sector – Yvonne Gavan, Senior Policy Officer, Scottish Government,

Email: Yvonne.Gavan@gov.scot

Measures to alleviate pressures on public services, business and consumers

Extended protection for those in debt from creditor enforcement action

The Act extends the standard six week moratorium period during which creditors cannot take any enforcement action against debtors for debts owed. The revised moratorium provisions afford protection from creditor enforcement action for a period of **six months**. The rule that currently restricts moratorium applications to one per year has also been rescinded.

The increased moratorium period should:

- reduce stress and protect the mental health of those worried about the prospect of creditor enforcement action during a time of increased uncertainty;
- give additional time for client options to be considered properly before potentially irreversible decisions are taken, particularly as advisers may find it difficult to see the volume of clients that need help; and
- protect clients whose problem debt is a direct result of COVID-19, and whose finances will normalise after the pandemic without the need for a formal debt solution.

The Act also introduces provisions on the use of electronic signatures. These will allow AiB to accept debtor bankruptcy application forms submitted with electronic signatures.

For further information, visit the Accountant in Bankruptcy website:

<https://www.aib.gov.uk>

Suspending timescales set out in the Social Security (Scotland) Act and extending the period allowed for Ministers to make a redetermination

The following measures help to ensure that Social Security Scotland clients are not disadvantaged as a result of the coronavirus outbreak and are able to claim assistance to which they are entitled and which they may have missed out on if late applications were not allowed.

Timescales for making applications

The Act modifies timescales for making applications where these have not been able to be met directly as a result of coronavirus. It will, therefore, allow late applications across all forms of assistance where the lateness is due to coronavirus. This will also cover age limits for assistance where the age limit is breached because the application could not be made on time as a result of coronavirus.

Redeterminations and Appeals

The Act relaxes timescales which apply to clients seeking a re-determination as well as for clients bringing an appeal before the First-tier Tribunal for Scotland. These extended timescales apply where normal timescales cannot be met for reasons related to coronavirus.

The Act also relaxes, for a limited time, timescales for Social Security Scotland to complete a redetermination. Social Security Scotland must complete the redetermination as soon as reasonably practicable within the new extended timescale - the original timescale of 16 working days is extended by an additional 9 weeks.

Further Information

Requests for re-determination

Individuals are normally able to submit re-determination requests for up to one year from the date of receiving the original decision, as long as they have a good reason. Reasons related to coronavirus will fall within the “good reason” description.

To address the specific scenarios of individuals who are presently coming to the end of the year-long period, and may not be able to submit a re-determination request due to coronavirus, Social Security Scotland will allow late requests if satisfied that the reason for the delay in requesting a re-determination is related to coronavirus.

Social Security Scotland timescales for completing re-determinations

Social Security Scotland’s ability to meet the current 16 working day timescale will be impacted by the coronavirus outbreak. During the disrupted time period, it will be dealing with staff absence as a result of illness, the need to care for family members who are ill, the need to provide child-care, seasonal leave and other reasons.

The client’s ability to gather and submit any further information may also be impacted by the coronavirus outbreak and submission of further evidence may be delayed and/or impacted by inbound mail issues and for other reasons. The time to carry out a re-determination once all information is received may then be impacted by staff absences.

To make clear that Social Security Scotland will continue to make all redeterminations as quickly as is possible under the circumstances, the Act requires Social Security Scotland to make the redetermination as soon as reasonably practicable within a new extended timescale of an additional 9 weeks on top of the current 16 working days.

Requests for Appeals

Individuals are currently able to submit appeal requests without permission from the Tribunal for 31 days after the event that triggers the right to appeal (i.e. a redetermination decision, or receipt of notice that a redetermination has not been

made within the period allowed). Appeals can be requested up to one year after the event with permission from the Tribunal.

To address the specific scenarios of individuals who are presently coming to the end of the year-long period, and may not be able to submit a request for an appeal due to coronavirus, the Act ensures that coronavirus related matters will be considered as good reasons for delays, and also for the one-year time limit to be dis-applied.

The Act also allows appeals by individuals against decisions, including a decision by the Scottish Ministers regarding whether a coronavirus-related matter is a good reason for a late request for redetermination, beyond the one-year time limit.

Best Start Grant/Young Carer Grant/Funeral Support Payment

The Act relaxes timescales for making applications where these have not been able to be met directly as a result of coronavirus. It allows for late applications across all forms of assistance where the lateness is due to coronavirus.

The Act also allows for a late application to be accepted and considered where a person has passed the age limit for assistance, and would otherwise lose their entitlement to assistance, where the application could not be made earlier due to coronavirus.

Contact: Simon Coote, Head of Legislation and Operational Policy Unit, Social Security Policy, Scottish Government Email: Simon.Coote@gov.scot

Giving protection against eviction to those with commercial leases

Irritancy clauses in commercial leases: non-payment of rent or other sums due

Tenants under commercial (not residential or agricultural) leases in Scotland can currently be evicted for non-payment of rent after a period as short as 14 days using irritancy procedures. In the current climate with many premises having to close and/or having little or no cash flow there has been a call for assistance from tenants in the form of rent holidays, rent reductions, and rent deferment. Many landlords and tenants are already having conversations and reaching voluntary arrangements about rental payments due shortly, but the Scottish Government recognises businesses that are struggling with their cashflow due to coronavirus remain worried about eviction.

The Act extends the period before eviction can take place to 14 weeks and applies irrespective of whether a notice has already been served (provided the 14 day period has not already expired) and irrespective of whether the circumstance which would entitle the landlord to terminate the lease already exist.

A tenant can still be evicted for non-payment of rent under the Scottish Act after the requisite 14 week period has expired. This contrasts with the situation in England, Wales and Northern Ireland where there are absolute moratoria on forfeiture in place

so that a tenant cannot be evicted for non-payment of rent. All of these moratoria have now only been extended to 31 December 2020.

In order to ensure that there is flexibility - for example to extend this period to a longer period if necessary - it should be possible for Ministers to alter this 14 week period by means of regulations.

Contact: David F Mitchell, Property Adviser, Property Division, Scottish Government, Email: David.Mitchell2@gov.scot

Allowing local authorities to exclude people from meetings where required by statute (on protecting public health grounds)

Schedule 6, paragraph 13 creates a new provision which, for the duration of the coronavirus crisis, gives local authorities the power to exclude the public from its meetings if the local authority considers that allowing members of the public access would create a real or substantial risk to public health, specifically relating to infection or contamination by coronavirus. Where the council ordinarily have facilities to enable remote attendance/participation in meetings, consideration may need to be given to the maximum numbers the technology is able to support.

It is believed that this is a reasonable and proportionate measure to protect the public and local authority council members for the duration of the coronavirus crisis.

While a requirement to provide remote access to local authority meetings to the public is not included in the new provision, the expectation is that local authorities will continue to make reasonable efforts for some public online access to deliberations at their meetings during the crisis. The public should still be able to access information on the discussions and decisions made at these meetings online or physically after the end of the coronavirus crisis.

Paragraph 9 provides that the existing requirement for local authorities to provide hard copies or extracts of a document requested by a member of the public in their offices will no longer be compulsory. Local authorities will only need to provide such hard copies or extracts if it is reasonably practicable to do so. For instance, if the local authority office is closed then it will not be possible to do.

Contact: Stuart Johnston, Senior Policy Officer, Local Government Policy and Relationships Team, Scottish Government, Email: Stuart.Johnston@gov.scot

Delaying ballots for Business Improvement Districts and, possibly extending their lifespan

Scotland's Towns Partnership is engaging with Business Improvement Districts regarding the impact of this measure.

Contact: David Cowan, Head of Regeneration Unit, Scottish Government, Email: David.Cowan@gov.scot or Alex McGhie, Regeneration Policy Officer, Social Justice and Regeneration Division, Scottish Government, Email: Alex.McGhie@gov.scot

Suspension of time limits in the Anatomy Act to relieve pressure on medical schools

University Anatomy Departments have been given advice regarding the impact of these measures.

Contact: Sharon Grant, Team Lead, Health Protection Division, Email: Sharon.Grant@gov.scot

Easement of local authority requirements under s.13ZA of the Social Work (Scotland) Act in order to provide community care services, including moving the adult to residential accommodation, to protect vulnerable adults.

The Act makes changes that affect adults lacking capacity. They are found in Schedule 3, Part 2.

Paragraph 11(1) amends s.13ZA of the Social Work (Scotland) Act 1968 in two ways:

1. It removes the requirement of the local authority to take into account the past and present wishes of the adult, and the views of any interested party when taking any steps to help an adult lacking capacity benefit from a community care service. A community care service includes moving the adult to residential accommodation.
2. It allows the local authority to take the above steps, even if there is a guardian, power of attorney or intervener appointed with relevant powers, or if there is an application being made to appoint a guardian, power of attorney or intervener with the relevant powers.

This allows local authorities to take immediate steps to safeguard the health and welfare of vulnerable adults. This in particular includes moving the adult from acute hospital wards to residential care, or other appropriate accommodation, where there may be a deprivation of the adult's liberty in order to protect them from the risk of infection.

This was one of the few provisions that would have come into force when and if Ministers approved its use by invoking regulations. This never happened and the provisions were never in force. Paragraph 11(1) was early expired on 29 September by the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020.

Contact: Peter Quigley, Team Leader Adults with Incapacity Legislation and Practice, Directorate for Community Health and Social Care, Scottish Government Email: Peter.Quigley@gov.scot

Amendments to extension of time limits in Adults with Incapacity (Scotland) Act to help protect vulnerable adults

Paragraph 11(2) amends s.58A of the Criminal Procedure (Scotland) Act 1995:

If a person is convicted of an offence in the high court or sheriff court, then the court has the option to place the person under a welfare guardianship order. This order continues in force for a period of 3 years or such other period (including an indefinite period) as the court may determine.

The amendment ensures that during the period of crisis when the provisions are in force, the guardianship does not expire and require a renewal to be made, with the accompanying work that would entail. This ensures that professionals are not taken away from the urgent work they are required to undertake during the crisis and that the adult still has someone to look after their welfare.

The provisions therefore 'stop the clock' on the period of the guardianship, whilst the provisions are in force, but the guardian is still able to exercise their powers. This will mean that when the provisions are switched off when the crisis has subsided, then whatever time was left on the guardianship when the provisions were switched on will remain. This does not apply to indefinite orders and does not affect any other reason by which the order could come to an end.

These provisions have been extended and suspended (see below).

Paragraph 11(3)(a) amends s.47 of the Adults with Incapacity (Scotland) Act 2000:

s.47 allows a health professional of a prescribed class, to issue a certificate to an incapable adult for medical treatment for the specified period.

The amendment ensures that the certificate does not expire when the provision is in force during this time of crisis. It ensures that medical treatment can continue to be given to a vulnerable adult where this is required. This is intended to preserve the workload of health professionals for more urgent work.

The provisions therefore 'stop the clock' on the period of the certificate, whilst the provisions are in force. This will mean that when the provisions have expired whatever time was left on the certificate before the provisions were in force will return. This does not affect any other reason a certificate may come to an end.

These provisions have been extended and suspended (see below).

Paragraph 11(3)(b) amends s.58 of the Adults with Incapacity (Scotland) Act 2000:

This affects guardianship orders granted by the Sheriff. Guardianship orders are granted for a period of 3 years or such other period (including an indefinite period) as the court may determine.

The amendment ensures that when these provisions are in force, the guardianship does not expire and require a renewal to be made, with the accompanying work that

would entail. This is intended to preserve the work capacity of professionals for urgent work, whilst ensuring that the adult still has a guardian to look after their welfare.

The provisions therefore ‘stop the clock’ on the period of the guardianship, whilst the provisions are in force, but the guardian is still able to use their powers. This will mean that when the provisions have expired, whatever time was left on the guardianship order before the provisions were in force will return. This does not apply to indefinite orders and does not affect any other reason an order could come to an end.

These provisions have been extended and suspended (see below).

Paragraph 11(3)(c) amends s.60 of the Adults with Incapacity (Scotland) Act 2000

This affects the renewal of guardianship orders granted by the Sheriff. The orders can be continued by the Sheriff for a period of 5 years or other such period (including an indefinite period) as the court may determine.

Renewals are affected in the same way as guardianship orders are as described in the previous paragraph.

These provisions have been extended and suspended (see below).

Extension and suspension of guardianship and s.47 provisions

The expiry date of Part 1 of both Scottish Acts (covering guardianship and s.47 provisions) was extended by the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 from 30 September 2020 to 31 March 2021.

Separate regulations have been made - the Coronavirus (Scotland) Act 2020 (Suspension: Adults with Incapacity) Regulations 2020 - to suspend schedule 3, Part 2, paragraphs 11(2) and 11(3) of the first Scottish Act which relate to guardianship and s.47 provisions. The provisions were suspended from 30 September 2020. To reinstate these provisions, regulations subject to scrutiny by Parliament will be required.

Contact: Peter Quigley, Team Leader Adults with Incapacity Legislation and Practice, Directorate for Mental Health and Social Care, Scottish Government Email: Peter.Quigley@gov.scot

Extend the duration of planning permission for applications which are due to expire in the next 6 months

The Coronavirus (Scotland) Act provides that if planning permission or planning permission in principle was to lapse during the “emergency period” then the period within which development is to be commenced is extended. This applies whether the original duration of the permission is as specified in legislation or has been set by a

direction made by the planning authority or Scottish Ministers when granting permission.

Where a full planning permission would expire during the “emergency period” then that permission will not lapse for a period of 12 months from the date on which the provisions come into force (the “extended period”), irrespective of that development having not been commenced. The permission will only lapse if development has not commenced before the end of the extended period.

The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2020 amend the definitions of “emergency period” and “extended period” in sections 58(3C) and 59(8C) of the Town and Country Planning (Scotland) Act 1997 (“the Act”), as it has effect by virtue of paragraphs 8 to 10 of schedule 7 of the Coronavirus (Scotland) Act 2020, and in section 16(6) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings Act”), as inserted by paragraph 2 of schedule 4 of the Coronavirus (Scotland) (No. 2) Act 2020.

As currently defined by sections 58(3C) and 59(8C) of the Act, the “emergency period” began on 7 April 2020 and would end on 6 October 2020 and the “extended period” began on 7 April 2020 and would end on 6 April 2021. As amended by these Regulations, the “emergency period” is the period which began on 7 April 2020 and will end on 31 March 2021 and the “extended period” is the period which began on 7 April 2020 and will end on 30 September 2021.

As currently defined by section 16(6) of the Listed Buildings Act, the “emergency period” began on 27 May 2020 and would end on 6 October 2020 and the “extended period” began on 27 May 2020 and would end on 6 April 2021. As amended by these Regulations, the “emergency period” is the period which began on 27 May 2020 and will end on 31 March 2021 and the “extended period” is the period which began on 27 May 2020 and will end on 30 September 2021.

The same applies to planning permission in principle. However, as well as the overall duration, attention also has to be paid to the time limits for applying for approval of matters specified in conditions (AMSC) attached to a planning permission in principle. In relation to applications for AMSC, if the last date for making an application for an AMSC is within the emergency period then the time limit for making such an application is to the end of the extended period.

Further general information on duration of planning permission in principle can be found in Annex H of Scottish Government Circular 3/2013 on Development Management Procedures: <https://www.gov.scot/publications/planning-series-circular-3-2013-development-management-procedures/> .

It is not expected that authorities will need to take any action other than to share this with stakeholders to ensure they are aware of the potential change to the date at which their planning permission will expire. Authorities will need to take the provisions of the Act into account when a Notification of Initiation of Development is submitted.

Contact: Chris Sinclair, Policy Manager, Planning and Architecture Division, Scottish Government Email: covid19planningenquiries@gov.scot

Changes to alcohol and civic government licensing legislation to provide necessary flexibility for Licensing Boards, licensing authorities, applicants and other parties

The Act contains a number of temporary, but significant changes to the alcohol and civic government licensing regimes in response to the outbreak. These changes are designed to assist users of the licensing system as well as licensing authorities with the significant challenges posed by the coronavirus outbreak.

The changes made

The Scottish Government considers the licensing provisions in the Act to be a pragmatic response to the coronavirus outbreak. In some areas, they empower the relevant licensing authority to extend timescales and deadlines. In other areas, they give further time to key licensing partners such as Police Scotland when views are being sought on licensing decisions. In some other areas, discretion is given to excuse the failure to meet a relevant deadline or other procedural step if the relevant authority considers it reasonable. As a package, the changes are designed to minimise the chances of licence holders' right to hold and keep a licence being adversely affected through no fault of their own as a result of the coronavirus outbreak.

There is also a change to the current powers for Licensing Boards under the 2005 Act to relieve procedural failings. Currently, a Licensing Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if the failure is due to mistake, oversight or other excusable cause, and the Board considers it appropriate in all the circumstance to relieve the failure. This power does not exist in relation to relieving procedural failures on the part of the Board itself and the Act makes provision in this area where this arises as a result of the coronavirus outbreak.

Necessity and urgency

Without the changes provided for in the Act relating to licensing, there is a high risk of significant numbers of licensing interests, such as those holding premises licences which authorise the sale and supply of alcohol, being unable to adhere to the strict statutory rules that apply.

In the context of the coronavirus outbreak, the Scottish Government does not consider that anyone should be penalised due to being unable to adhere to the normal rules through no fault of their own.

Contact: Philip Lamont, Head of Criminal Law, Practice and Licensing Unit, Criminal Justice Division, Scottish Government Email: Philip.Lamont@gov.scot

Extend the period of validity of advance notices and allow electronic communication of applications to the property registers

These measures address risks faced by parties involved in property transactions impacted by the closure of the property registers.

The provisions extend the protected period provided by advance notices, allowing additional time for solicitors to prepare and submit applications for registration once the property registers are reopened by the Keeper. This will also cover advance notices which had effect while the registers have been fully or partly closed since 24 March.

In order to facilitate remote submission of applications to the property registers, the provisions also provide that submission to the Keeper by electronic means of a copy of a traditional deed is sufficient evidence for the purpose of accepting an application for registration. This will allow applications by a means and in a form which will be specified on the Registers of Scotland website.

Further details on the practical measures of how applications will be made under the provisions and the contingency measures currently in place can be found at ros.gov.uk/coronavirus-covid-19

Contact: Harry Murray, Registers of Scotland Email: harry.murray@ros.gov.uk

End the current 2019/20 muirburn season early and maintain the facility to suspend muirburn for the period the Act is in force, whilst allowing muirburn to commence with the 2020/21 season using a separate SSI.

Schedule 7, paragraphs 32-33 of the Coronavirus (Scotland) Act suspends the muirburn season, as set out in section 23 of the Hill Farming Act 1946, which usually runs from 1 October until 15 April.

Muirburn is the controlled burning of heather, gorse bushes and grasslands as a land management tool. Muirburn is not an activity that can be considered essential to the economy in the current emergency. Furthermore, although the risk of wildfire from muirburn is low, it places a small additional risk that our emergency services may be called upon, unnecessarily, to deal with out of control or unintended fires or to treat those that may be injured by such fires.

Effect of the provisions in the Act

- The Coronavirus (Scotland) Act had the effect of ending the 2019/20 muirburn season earlier than its scheduled date of 15 April 2020.
- The provisions of the Act as regards the suspension of the muirburn season have been retained up to 31 March 2021; a separate instrument (the Coronavirus (Scotland) Act 2020 (Suspension: Muirburn) Regulations 2020), which came into force on 1 October 2020, suspended the operation of paragraphs 32 and 33 of schedule 7 of the Act.

- This means that muirburn can take place from 1 October and may continue as per the usual arrangements.

Contact: Steven Dora, Biodiversity Policy Manager,
Environment and Forestry Division, Scottish Government, Email:
steven.dora@gov.scot

Measures to ensure the justice system is able to deliver essential services

Extensive engagement is taking place between Scottish Government officials and stakeholders across the justice sector, to provide guidance on justice related provisions of the Act. This cannot be replicated here. However, the following highlights some key issues in relation to Justice.

Community Orders

(i) Extension of the specified period for unpaid work or other activity requirements in Community Payback Orders

As soon as the 2020 Act came into force on 7 April 2020, the time limit for the completion of all existing unpaid work or other activity requirements in CPOs was extended by 12 months (i.e. whatever specified period had been imposed by the court for completion of unpaid work in an individual order, the new end date became 12 months later). This will be alterable by a Scottish statutory instrument, in order to allow it to be extended further should that be necessary.

A restriction was also placed on courts for the period during which the legislation is in force, to ensure that any new unpaid work or other activity requirements have a time limit of at least 12 months from the point of imposition. It should be noted that, as a result of the extension of relevant provisions in the 2020 Act, this restriction continues to apply to any new CPOs with unpaid work or other activity requirements imposed.

These measures allowed justice social work to suspend all unpaid work programmes during the initial lockdown period without affecting the ability of individuals to complete their hours within court-directed timescales. As restrictions eased, local authorities were encouraged to restart unpaid work in a safe and gradual manner. Local authorities continue to work to deliver unpaid work requirements in a safe manner, though capacity is impacted by measures to keep individuals on orders and staff safe.

(ii) Ability to postpone CPOs or DTTOs, or requirements contained in those orders, for a specified period

It was hoped that the above measures at (i) would be sufficient in allowing justice social work to continue to facilitate all remaining orders. Nonetheless, as the impact of COVID-19 continues over an extended period, it may become necessary to take further action in order to allow justice social work to focus on cases presenting the highest risk of harm or to protect the most vulnerable. The legislation therefore gives

the Scottish Ministers the power to postpone certain orders (CPOs and DTTOs), or requirements contained in those orders (including by reference to type of offence or individual), for a specified period – essentially pressing pause on these until such time as the situation improves sufficiently. On the expiry of the specified period, the orders or requirements would progress as if no time had elapsed since the postponement was put in place (but obviously moving forward relevant timescales/deadlines to account for this), allowing the requirements to be carried out once restrictions related to the pandemic (or a phase of the pandemic) are lifted. Should this power be used, the Act places a duty on local authorities to inform those subject to the relevant orders of any changes made by this provision.

(iii) Ability to vary the requirements of community orders which have been imposed by the courts

The legislation also gives the Scottish Ministers the power to vary, in bulk, the requirements of community orders which have been imposed by the courts. The issue this seeks to resolve is slightly longer term; given the need to delay the carrying out of unpaid work (and possibly other requirements) there is likely to be an unmanageably large number of hours of unpaid work due to be carried out as the pandemic continues and potentially beyond. This aspect of the legislation will enable the Scottish Ministers, by a Scottish statutory instrument, to reduce or vary the requirements of orders, or to revoke certain orders entirely, in order to prevent the system being unable to deliver the outstanding orders. As the volume of court business increases and capacity to deliver community orders remains constrained, it may be necessary to use these powers. As with the above, there would be a duty on local authorities to inform those subject to the relevant orders of any changes made by this provision.

The Scottish Government work closely with Social Work Scotland and others to identify exactly if, when, and how these measures should be used.

Contact: Graham Ackerman, Head of Community Justice Interventions Unit, Scottish Government, Email: cpo@gov.scot

Parole

Schedule 4, paragraph 17 and 18 make provisions in regard to parole.

Delegation Powers

These provisions allow the Chair to delegate the statutory functions laid out in the Prisoners and Criminal Proceedings (Scotland) Act 1993 and the Parole Board (Scotland) Rules 2001, so the Chair of the Parole Board can delegate to other members in order to allow a wider spread of responsibility among Board members. This will increase resilience and allow the Parole Board to plan for an event where the Chair is unable to carry out his or her statutory functions.

The Act also includes provision to allow for all the Chair's functions in the first instance to be automatically exercised by the next most senior Board member if the Chair becomes unable to exercise his or her functions.

Parole Hearings

The provisions include a change to the Parole Board Rules at Rule 20 so the Parole Board when determining a Part IV (tribunals) case can decide not to hold an oral hearing unless it is in the interests of justice to do so. The provisions also allow that where an oral hearing is to take place that it can all be by video or teleconference. This will cut down the number of in-person oral hearings being held and keep members and others safe by avoiding face-to-face contact.

The provisions also have the effect that extended sentence prisoners recalled under section 17(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and serving the extension part of their sentence, can be considered under Part III of the Rules instead. This allows these cases, where appropriate, to be heard at casework meetings by two rather than three members. This is designed to increase resilience.

Contact: Sandra Wallace, Parole Policy Manager, Scottish Government, Email: Sandra.Wallace@gov.scot

Release of Prisoners

Scottish Ministers have powers under the Act to consider early release of prisoners to help limit the spread of COVID-19 and to ensure our prisons can operate safely. However, it should be noted that the changes to volumes of court business, have already had an impact on reducing the prison population, although court business is now resuming. We will continue to consider what appropriate steps can be taken via Home Detention Curfews.

The Scottish Ministers can make provisions in the regulations for different classes of person, prisons or classes of prison for the purposes of release. Prison Governors retain the ability to veto release where they think this would involve an immediate risk of harm to an identified person. There are also a number of categories of prisoners who are excluded from being released under the regulations (including Life sentence prisoners, sex offenders, those subject to a Supervised Release Order or serving an extended sentence, and untried prisoners).

We remain in contact with Social Work Scotland, COSLA, Community Justice Scotland and Criminal Justice Voluntary Sector Forum about these measures and will continue these discussions, as well as with other partners involved in prison release, in order to plan for any further practical arrangements that would be required were it to be that these measures were once again put into effect.

It should be noted that no prisoners are currently being released in this way.

Contact: Graham Robertson, Community Justice Division, Scottish Government, Email: Graham.Robertson@gov.scot

Provisions in respect of looked after children and children’s hearings system

The Act makes provision for alterations to processes in respect of looked after children, child protection and the children’s hearing system. The Scottish Government has produced detailed guidance on these changes, which can be accessed at: <https://www.chip-partnership.co.uk/2020/04/06/guidance-coronavirus-scotland-act-2020/>

Contact: Tom McNamara, Head of Youth Justice & Children’s Hearings, Care, Protection and Justice Division, Scottish Government Email: Tom.McNamara@gov.scot

Allowing interim legal aid payments to be made to solicitors

The Act contains provisions to make it easier for solicitors and counsel to apply for interim payments from the Scottish Legal Aid Board, rather than waiting until a case has completed.

Interim payments are already available where the Legal Aid Board is satisfied that the work carried out has been valid, on the basis of robust evidence submitted by claimants. These provisions allow for a relaxation of the requirements on the Board to scrutinise claims before making interim payments, delaying the provision of detailed evidence by claimants until the point of final account, and remove conditions which must currently be met for counsel to apply.

The provisions also strengthen the powers of the Scottish Legal Aid Board to ensure they can reclaim any overpaid fees, where this is found to be necessary upon assessment of the proper payment due at the end of the case.

Contact: Denise Swanson, Head of Access to Justice Unit, Scottish Government, Email: denise.swanson@gov.scot

CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020 - GUIDANCE ON SECTOR-SPECIFIC MEASURES

Protection of the individual

Student Residential Tenancy Agreements: Notice Periods

To enhance the rights of students who have leases in halls of residence and Purpose Built Student Accommodation (PBSA) during the Covid-19 outbreak, Schedule 1, Part 1 of the Act makes provision for:

- a 7 day notice period for those who have already entered into a student residential tenancy agreement and have occupied the property; and

- a 28 day notice period for those who have already entered into a student residential tenancy but have not yet occupied the property, and agreements entered into while the Act is in force.

Students would only be able to use notice periods for Covid-19 specific reasons.

Contact: Natalie Wilson or Steven Paxton, Directorate for Advanced Learning And Science, Scottish Government. Email: natalie.wilson@gov.scot and steven.paxton@gov.scot

Private Landlord Pre-Action Requirements

The measures within the Act aim to support private landlords and tenants to work together to manage any rent arrears caused as a result of the coronavirus pandemic. They complement the action taken to protect tenants from eviction action in the first Coronavirus (Scotland) Act 2020 and formalise the steps landlords should take when seeking to work with tenants to manage arrears.

Pre-action requirements already apply in the social rented sector, setting out a series of steps a social landlord must comply with when seeking to end a tenancy. These provisions give Scottish Ministers the power to make regulations to place similar requirements on private rented sector landlords.

The provisions also set out that the First-tier Tribunal for Scotland (Housing and Property Chamber) must take account of the extent to which a landlord has complied with the pre-action requirements when determining whether to grant a repossession order.

The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 came into force on 30 September and set out the steps that landlords should take in advance of applying to the Tribunal to repossess a let property on the grounds of rent arrears that have occurred since the Act came into force. From 6 October, the Tribunal will consider compliance with the requirements in all relevant cases.

Contact: Yvette Sheppard, Private Housing Services Unit, Scottish Government. Email: Yvette.Sheppard@gov.scot

Coronavirus Carer's Allowance Supplement

Schedule 1, Part 3 of the Act provides for the Carer's Allowance Supplement payments made for the period of 1 April 2020 to 30 September 2020 to be £230.10 higher than the standard rate.

Carer's Allowance Supplement

Carer's Allowance Supplement is paid by Social Security Scotland on a twice-yearly basis to people who are living in Scotland and in receipt of Carer's Allowance. For

each six month period a qualifying date is chosen and people living in Scotland and in receipt of Carer's Allowance on this date will receive the payment. The qualifying date for the period of 01 April 2020 to 30 September 2020 was 13 April 2020.

The rate of Carer's Allowance Supplement is calculated using a formula set out in Section 81 of the Social Security (Scotland) Act 2018, which is designed to ensure that the weekly equivalent amount of Carer's Allowance plus Carer's Allowance Supplement is greater than or equal to an uprated rate of Jobseeker's Allowance. The standard payment rate for 2020/21 is £230.10.

Coronavirus Carer's Allowance Supplement

The provisions in this Act mean that carers receiving a Carer's Allowance Supplement payment for the qualifying date of 13 April 2020 will receive a payment of £460.20. This is made up of the £230.10 'Coronavirus Carer's Allowance Supplement' and £230.10 for the standard payment.

Carers do not need to apply for the payment. This payment was made automatically by Social Security Scotland in June in the same way as the standard Carer's Allowance Supplement payment. Carers who have applications for Carer's Allowance backdated to include the qualifying date of 13 April 2020 will receive the payment in future Carer's Allowance Supplement payment runs.

The payment is disregarded in the calculation of means-tested benefits and Tax Credits in the same way as Carer's Allowance Supplement. The payment is taxable, in the same way as Carer's Allowance Supplement is taxable.

Carers receiving Carer's Allowance Supplement payments in June received further information about the payment in a leaflet included with their Carer's Allowance Supplement award letter. Further information was shared with stakeholders and made available more widely in advance of the payment through key channels such as mygov.scot.

Coronavirus Carer's Allowance Supplement is a one-off payment. The rate of Carer's Allowance Supplement for the period from 01 October 2020 to 31 March 2021, for which the qualifying date is 14 October 2020, will be £230.10. There will be no additional payment for this period.

Contact: Ellen Searle, Carer Benefits Policy, ellen.searle@gov.scot and Jane Sterry, Carer Benefits Policy, jane.sterry@gov.scot

Social care staff support fund

Schedule 1, Part 4 of the Act enables Scottish Ministers to establish a Social Care Staff Support Fund to provide financial assistance to social care workers who have a restricted ability to work due to coronavirus and, as a result of that, have a reduced income and consequently are experiencing, or would experience, financial hardship.

The Fund commenced on 25 June 2020 and can be backdated to 23 March 2020 for social care workers who are still experiencing financial hardship from absences earlier in the pandemic. You can find information about the operation of the Fund, including eligible groups and the circumstances in which it is available, at gov.scot.

Communications and guidance setting out how this Fund can be accessed for eligible employees, were issued in June to social care employers, trade unions, local authorities, and health and social care partnerships.

Contact: Lauren Glen, Social Care Support, Scottish Government.
Email: lauren.glen@gov.scot

Measures related to bankruptcy

Details of the changes to the bankruptcy process are outlined below:

Minimal Asset Procedure (MAP) Bankruptcy Applications

The Act makes a number of changes regarding MAP administration:

- the debt ceiling is increased from £17,000 to £25,000;
- student debt is exempted from the debt ceiling calculation; and
- MAP application fees are removed for those in receipt of specified benefits, and reduced to £50 from the current £90 for all others.

Full Administration Bankruptcy

Bankruptcy applications which do not satisfy MAP criteria are subject to full administration. Currently, the application fee in full administration bankruptcies is £200, this will be reduced to £150 and is waived for those in receipt of specified benefits.

Qualified Creditors

Creditors may petition for the sequestration of individuals / entities when owed at least £3000. This minimum debt threshold will be increased to £10,000.

Bankruptcy Administration

Building on the provisions of the Coronavirus (Scotland) Act, the Act makes a number of changes to expedite bankruptcy administration process:

- the deadline for trustees to send their Debtor Contribution Order proposals to AiB in creditor petition bankruptcies is increased from 6 to 12 weeks;
- virtual statutory meetings of creditors are permitted;
- all statutory forms detailed in the Bankruptcy (Scotland) Regulations can be completed with electronic signatures; and

- bankruptcy circulars may be sent electronically with the assent of the recipient.

Registers of Scotland

The Act also includes a provision to introduce electronic transmission of inhibitions and inhibition renewals to Registers of Scotland.

For further information, visit the Accountant in Bankruptcy website:

<https://www.aib.gov.uk>

Named Persons - witnessing of signatures

Schedule 1, Part 4 of the Act temporarily removes the requirement for a nominated person to have their signature witnessed by a prescribed person when they agree to become a named person.

Under the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”), a patient aged 16 or over may choose an individual to be their named person. A named person represents the interests of and supports a patient subject to proceedings under the 2003 Act. The procedure for nominating a named person is set out in section 250 of the 2003 Act. The nominated person has to add a docket to the nomination consenting to it. They must also sign the docket and this signature must be witnessed by a “prescribed person”.

Temporary Change: Paragraph 12, of Schedule 1 amends s250(2A) of the Mental Health (Care and Treatment) (Scotland) Act 2003 and removes the requirement for a prescribed person to act as a witness to the nominees’ signature;

- The change only affects the process for the proposed named person (nominee).
- The nominee is still required to sign “the docket” when agreeing to take on the role as named person.

Patient Safeguards: This amendment continues to ensure that the patient safeguards remain as there are no changes to the process for the patient (nominator). Nominations will continue to have to be made in writing and the patient will still require to have their signature witnessed by a prescribed person.

The prescribed person in witnessing the signature will be certifying that they believe that the nominator understands the effect of their nomination and that the nominator has not been subject to any undue influence in making the nomination.

The temporary change will ensure that the patient can have a named person, should they choose to do so, remains effective during the coronavirus outbreak and will minimise any delays to the nomination process being completed effectively.

Contact: Ruth Wilson, Mental Health Law Team, Directorate for Mental Health, Scottish Government. Email: Ruth.Wilson@gov.scot

Care Homes: Emergency directions

Part 7 of Schedule 1 of the Coronavirus (No.2) Scotland Act 2020 inserts Sections 63A and 63B to The Public Services Reform (Scotland) Act 2010. Section 63A gives a Health Board the power to direct a care home during the coronavirus pandemic to take specific actions. These would be steps which are required to be carried out within a specified time frame and must relate directly to reducing the risk to the health of those residing in the care home. In practice, a verbal instruction would be followed by a formal written direction sent to the care home provider. Scottish Government officials must be made aware at the time a direction is made.

For such directions to be made the Health Board must consider that, for a reason relating to coronavirus, there is a material risk to the health of residents in that particular home. It is expected that directions be reasonable, appropriate and proportionate.

Where a direction has been made, subsection (6) allows the Health Board to change or withdraw this at any point. They may wish to amend the direction or there may be consideration that steps taken by the care home, although not fulfilling the direction in terms, are suitable to address the issue which gave rise to the direction being issued, therefore the direction can be withdrawn.

When issuing a direction, the Health Board must have regard to any guidance which has been issued by Scottish Ministers in relation to their application during the coronavirus pandemic. It is the duty of Scottish Ministers to ensure that any such guidance is published and kept up to date.

We would expect in any instance where a Health Board has made a specific recommendation or ask, that the care home will respond positively to act on those recommendations. Where this does not happen, then the Health Board has power to issue a direction. In the exceptional instance that a care home provider does not take the necessary steps in response to a direction, section 63B allows the Health Board to carry out the steps themselves. To allow the Health Board to do this, they may enter the care home if necessary and recover the costs incurred of carrying out the actions from the provider. The Health Board must apply to the sheriff for a warrant to authorise this.

There may be instances where the provider thinks they have taken the necessary steps, but the Health Board disagrees. In these instances, the provider and Health Board would be expected to discuss the outstanding issues and agree a way through. Where the Health Board is ultimately not satisfied, they can amend their direction to provide further detail on the steps required, or issue a further direction in order to require the necessary action to be taken. If the terms of a direction are not complied with, the Health Board may take steps to carry out the necessary action themselves, having obtained a warrant to do so.

Contact: Caroline Sautter, Directorate for Community Health and Social Care, Scottish Government. Email: caroline.sautter@gov.scot

Care Homes: Emergency Intervention orders

Part 7 of Schedule 1 of the Coronavirus (No.2) Scotland Act 2020 inserts sections 65A and 65B to The Public Services Reform (Scotland) Act 2010. Section 65A gives Scottish Ministers the power to apply to the Sheriff Court or Court of Session for an emergency intervention where there is a serious risk to life, health or wellbeing of those residing in a care home. This provides the power for Scottish Ministers to nominate an officer to take over the day to day operation of a care home. It is anticipated that the Scottish Ministers will normally appoint the Chief Social Work Officer of the Local Authority to be the nominated officer.

It is the role of the nominated officer to take operational leadership of the care home. They will do this for the time specified in the order, which could be up to 12 months with an option to extend by up to a further 6 months. Where a nominated officer directs the service provider in relation to the care being delivered in the service, the service provider must comply with those directions. Although Ministers will normally nominate the Chief Social Work Officer who is employed by the Local Authority, we recognise that a range of professionals are involved with the care and support of care home residents, and we would continue to expect a partnership approach to providing the care to be taken in these circumstances.

To perform the required functions, the nominated officer is authorised to:

1. Enter the accommodation.
2. Direct and control the provision of the care home service.
3. Do anything considered necessary to ensure the service is provided to an appropriate standard.

After an application from Scottish Ministers, the court can make such interim order as it thinks fit. This is to allow urgent action to be taken if deemed necessary whilst court proceedings take place.

Scottish Ministers may intervene prior to making an application to the court where they are satisfied that it is essential to do so to prevent an imminent and serious risk to the life or health of people at the accommodation for reasons relating to coronavirus. Where Scottish Ministers intervene, they must make an application to the Sheriff Court or Court of Session within 24 hours of exercising this power.

Once Scottish Ministers have made an application, they must notify the Care Inspectorate, the Local Authority, the Health Board and Healthcare Improvement Scotland.

The court must make an emergency intervention order if it appears there is a serious risk to the life, health or wellbeing of those at the accommodation for reasons relating to coronavirus. The court may also include incidental provisions as it thinks fit, for example, prohibiting the sale of the accommodation or disposal of assets used in the provision of care at the accommodation.

The court may vary, extend or revoke an intervention order on the application of Scottish Ministers or the affected provider. There are a number of reasons why a

court may extend the order, such as the provider failing to co-operate with the nominated officer fully as to allow the care home to be returned to and kept at an appropriate standard within the original period of up to 12 months, or failing to address the concerns that led to the intervention. There may be instances where an order may be revoked and advice will normally be sought from the nominated officer, the Care Inspectorate, the Local Authority, the Health Board and Healthcare Improvement Scotland to allow Scottish Ministers to make that decision.

Contact: Caroline Sautter, Directorate for Community Health and Social Care, Scottish Government. Email: caroline.sautter@gov.scot

Powers to purchase care home services and care at home providers

Part 8 of Schedule 1 of the Act puts beyond doubt that if a care home or care at home service is unable to continue to care for individuals due to service failure, a Local Authority or NHS board can purchase the service so long as the provider is willing to sell. As well as a service, the Local Authority or NHS Board can purchase any asset or liability of a provider. Whilst a Local Authority can purchase a care home or care at home service, an NHS board can only purchase a care home service.

Although there is extra support and alternative measures available to support the social care sector, this provides a safeguard for the worst case scenario. The purchasing powers ensure the continuity of care for the people using these services in their current care settings and provide reassurance to the families of those who use services and staff that services will be supported.

Paragraph 20 sets out that the purchasing powers can be used if, due to coronavirus:

1. the provider is in financial difficulty
2. there is a threat to life, health or wellbeing of the people receiving the services
3. the provider has recently stopped providing services.

A provider is deemed to be in serious financial difficulty if it notifies the Care Inspectorate of certain types of insolvency event.

Whether there is a threat to life, health or wellbeing would be determined by the Local Authority or NHS Board, which must act reasonably in reaching that view. Before making any decision to purchase a provision, the NHS Board or Local Authority (whoever intends to make the purchase) must consult with the following stakeholders to ensure they are making an informed decision:

- The Care Inspectorate,
- Any other Local Authority or NHS Board in whose area the services are being provided,
- The Common Services Agency,
- Healthcare Improvement Scotland,
- Anyone else it considers appropriate.

The final decision to purchase will lie with the purchasing body – NHS Board or Local Authority.

If the Local Authority is to lead on the purchase of the service then they need agreement from the service provider. If the NHS Board is to lead on the purchase of the service then they need agreement from the service provider as well as a written and published direction from Scottish Ministers. This direction can be varied or revoked by Scottish Ministers if deemed necessary.

The new owner will be held to the same standards as any other operator of these services and will be required to address the issues that led to the sale.

Contact: Caroline Sautter, Directorate for Community Health and Social Care, Scottish Government. Email: caroline.sautter@gov.scot

Care homes: further provisions

Schedule 1, part 9 is introduced by section 2 of Act.

Inspections

Aims of the provision

It requires that the Care Inspectorate must prepare a report every two weeks during the emergency period. This report will set out the following:

- which care home services it has inspected during the two week period
- findings emerging from those inspections

This report is laid by the Care Inspectorate before Parliament. The Care Inspectorate, as an independent non-departmental Public Body, has a duty to publicise inspection reports as they deem appropriate, including via their website when ready to be published.

The first of these reports was published on 11 June 2020.

The Care Inspectorate currently has a duty under section 57 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”), to prepare a report following an inspection of a registered care service.

This provision extends on the reporting work already undertaken by the Care Inspectorate in relation to care homes for the duration of the emergency period.

It provides further assurance to the Scottish Ministers and to Parliament that care homes, which is recognised as one area for focus and action during the Covid-19 pandemic, are continuing to be appropriately scrutinised and supported.

It is for the Care Inspectorate and each care home service provider to agree a suitable process for ensuring that section 57(2) of the 2010 Act is adhered to within

the timeframe set by this provision during the emergency period. Providers of care services should still be given a right of reply following any inspection.

In carrying out this duty the Care Inspectorate, together with key partners, may wish to use the content of these reports to share learning and best practice, in order to adjust the collective Government, NHS and public body response to Covid-19 in registered care settings.

Content of the reports

The Care Inspectorate's scrutiny and inspection activity will take into account relevant indicators about the quality of care during the emergency period including, for example, Health and Social Care Standards and other frameworks, in order for inspectors to come to a professional judgement.

The inspections are completed using an augmented quality framework, which now includes quality indicators introduced by the Care Inspectorate in response to the pandemic. These are:

- 7.1 People's health and wellbeing are supported and safeguarded during the COVID-19 pandemic
- 7.2 Infection control practices support a safe environment for both people experiencing care and staff
- 7.3 Staffing arrangements are responsive to the changing needs of people experiencing care

At the very minimum, it is expected that the reports set out these evaluations for each care service inspected. The Care Inspectorate may also provide findings consisting of:

- summary of observations relating specifically to Covid-19 including for example Infection Preventions and Control (IPC), staff awareness and training, and availability and use of PPE
- other observations that highlight quality of care or safety concerns, good working practice, or other information the inspector deems relevant
- judgement about how well the service is managing any outbreak of Covid-19

Reporting on coronavirus deaths

Aims of the provision

It requires that care home service providers must make daily reports to the Care Inspectorate, detailing care home deaths during the emergency period.

The aim of this provision is to make clear to care home service providers that they must report to the Care Inspectorate information about suspected or confirmed deaths attributable to Covid-19. This helps to aid the Scottish Government and its partners to adjust the collective response to Covid-19 in health and social care settings.

It is envisaged that care home providers will provide this data to the Care Inspectorate under existing procedures and systems currently in place.

Information to be provided by care homes

Care home service providers must provide the following information to the Care Inspectorate daily:

- the number of deaths of residents confirmed to have been as a result of Covid-19
- the number of deaths of residents that are suspected to have been as a result of Covid-19
- the total number of deaths, irrespective of whether or not they are attributable to Covid-19

It is for the Care Inspectorate and care service providers to agree on the most effective way to communicate in order to ensure this information is provided.

Care homes should report a cumulative total for this information. Care homes are not obliged to submit a report on days where there are no new notifications of deaths.

Care Inspectorate reporting

The Care Inspectorate will collate the information made available each day by care home service providers, in order to prepare a new report every 7 days.

This report is shared with the appropriate Scottish Government officials and subsequently laid before Parliament each week during the emergency period.

The Care Inspectorate and Scottish Government analysts will together consider the most appropriate formatting of this reporting.

Contact: Kevin Fallon, Mental Health and Social Care Directorate, Scottish Government. Email: Kevin.Fallon@gov.scot

Marriage and civil partnerships

Paragraph 24 of Schedule 1 requires the Scottish Ministers, in conjunction with the Registrar General for Scotland, to take steps to ensure that the solemnisation of marriages and registration of civil partnerships continue to be available in Scotland during the time when the relevant provisions of the Act are in force.

Paragraph 24 also requires the Scottish Ministers to report periodically on the steps taken and on the numbers of marriages and civil partnerships that have taken place. The Scottish Ministers laid the first of these reports before the Scottish Parliament on 14 August.⁶

⁶ <https://www.gov.scot/publications/coronavirus-scotland-no-2-act-2020-report-marriage-civil-partnership/>

The provisions in paragraph 24 are in addition to the existing duty on the Scottish Ministers to end any restriction or requirement imposed by the health protection regulations currently in place as soon as that measure is no longer necessary to control the spread of coronavirus in Scotland.

The Scottish Government has separately published a route-map setting out a phased approach to lifting lockdown measures:
<https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/>

Operation of the justice system

Extensive engagement is taking place between Scottish Government officials and stakeholders across the justice sector, to provide guidance on justice related provisions of the Act. This cannot be replicated here. However, the following highlights some key issues in relation to justice.

Fixed Penalty Notices For 16/17 Year Olds

Under Regulation 9 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020⁷ [“the Health Protection Regulations”] as enacted a police officer could issue a fixed penalty notice [“an FPN”] to a person where the officer reasonably believed that the person:

- (a) has committed an offence under the Regulations, and
- (b) is aged 16 years or over.

The Coronavirus (No. 2) (Scotland) Act amends regulation 9 of the Health Protection Regulations to change the age to 18.

As a consequence, a police officer will only be able to issue an FPN under those Regulations where the officer reasonably believes that the person is aged 18 or over.

Amendments to Part 3 of the Proceeds of Crime Act 2002 (Confiscation: Scotland)

Proceeds of crime: extension of permitted period for purpose of confiscation order (paragraph 8 of Schedule 2)

Section 99 of the 2002 Act enables the court to postpone confiscation proceedings for a specified period. While this period may be extended, it cannot generally be extended beyond the permitted period, which is two years from the date of conviction. Section 99(4) provides that, where there are exceptional circumstances, a period of postponement may end after the end of the permitted period.

⁷ <http://www.legislation.gov.uk/ssi/2020/103/regulation/9>

This amendment inserts a new subsection (4A) in section 99 (confiscation orders: postponement) of the Proceeds of Crime Act 2002 (“the 2002 Act”). It puts beyond doubt that the coronavirus can be regarded as an exceptional circumstance under section 99(4) of POCA and, in circumstances where confiscation proceedings have been postponed or otherwise affected by coronavirus, the permitted period can be extended by stating that, for the purposes of section 99(4) of the 2002 Act, exceptional circumstances will include the effect (whether direct or indirect) of coronavirus on the proceedings. This amendment therefore ensures that confiscation orders can continue to be applied for despite delays caused by the postponement of court business and associated difficulties caused by the coronavirus outbreak.

Proceeds of crime: time limits for payment of confiscation order (paragraph 9 of Schedule 2)

Section 116 of the Proceeds of Crime Act 2002 (“the 2002 Act”) provides that a confiscation order must be paid immediately. However, if the accused can demonstrate that they require further time to pay, the court may extend the period for up to, but not exceeding, six months. In exceptional circumstances, this may be extended further to a maximum of twelve months from the date that the order was made. If a confiscation order is not paid on time, section 117 of the 2002 Act provides for interest to accrue on the outstanding balance and the court has no power to dis-apply this.

This amendment makes provision that, where the accused is unable to pay for a reason relating to coronavirus, the court may order that the extended period continue until such time as the court considers appropriate in the circumstances (i.e. the effect is that the twelve month restriction in section 116(5)(b) is dis-applied).

The amendment also modifies the effect of section 116(6) so that, where new subsection (5A) applies, an order under section 116(4) may be made after the end of the period of twelve months starting with the day on which the confiscation order is made.

The amendment also inserts a new section 116A into the 2002 Act to provide further time for payment due to coronavirus where the court has made an order under section 116(4) extending the specified period. Where the court is satisfied that the accused is unable to pay for a reason relating to coronavirus, it may make an order further extending the specified period for such period as the court considers appropriate in the circumstances

In relation to the accrual of interest on an unpaid confiscation order, this amendment inserts new subsections (3A) and (3B) into section 117 to set out further circumstances where no amount is required to be paid. New subsection (3A) allows for the twelve month restriction to be dis-applied where an application has been made on the basis of the accused’s inability to pay for a reason relating to coronavirus, whilst subsection (3B) provides that no amount is required to be paid for the purposes of section 117 where an application has been made under section 116A(2) for a further extension before the expiry of the specified period, and that application has not been determined by the court.

Contact: Defence, Security and Cyber Resilience Division
Email: organisedcrimeunit@gov.scot

Reports, accounts and other documents

Accounts of registered social landlords

To provide flexibility for Registered Social Landlords (RSLs) during the Covid-19 pandemic, the provisions within schedule 3 of the Act:

- extends the time Registered Social Landlords have to submit their audited annual accounts to the Scottish Housing Regulator by three months for this financial year;
- gives Registered Social Landlords up to nine months to submit their audited annual accounts to the Scottish Housing Regulator for this financial year;
- provides flexibility to Registered Social Landlords whose primary focus at this time is supporting their tenants and providing essential services in their communities.

This provision makes an amendment to the Housing (Scotland) Act 2010 applicable to this financial year only, extending the length of time RSLs have to submit accounts to nine months rather than six. This has the effect that it will not be an offence to submit accounts so long as they are submitted within the nine month period. RSLs will therefore benefit from a further 3 months to submit accounts. The criminal offence will apply as normal if accounts aren't submitted within the extended period.

This proportionate approach responds to the very specific pressures that RSLs are facing including lockdown measures, restricted access to offices where files are kept, levels of staff absence and auditors' availability carry out and prepare audits, due to the number of requests from clients to shift audit dates.

A permanent amendment was made to the 2010 Act because otherwise the provisions would have expired with the rest of the Act in September 2020. This would have meant that they would not have the desired effect of extending the deadline for RSLs in this financial year to December 2020. To ensure that this amendment applied until the nine months elapsed, a permanent amendment to the 2010 Act was therefore necessary. This does, however, only apply to the financial year as it ended on 31 March 2020.

Contact: Michael Boal, Social Housing Charter & Regulation Manager, Scottish Government, Email: Michael.Boal@gov.scot

Housing (Scotland) Act 1987: statement under section 33B

Paragraph 4 of Schedule 3 of the Act extends, by 6 months, the deadline for Scottish Ministers to publish a statement on exercising their power to modify local connection,

as required under section 33B(1) of the Housing (Scotland) Act 1987. The deadline is now therefore 18 months rather than 12 months after the coming into force of section 33B. The provision also allows Scottish Ministers to introduce regulations to further extend the period by up to an additional 6 months, on a one-off basis, should this be necessary.

Scottish Ministers took the opportunity this extension provides to postpone (from May until 3 August) the launch of a consultation required before the statement is published. Delaying the consultation gave local authorities and third sector front-line services much needed time and space to focus efforts on responding to the coronavirus outbreak, on behalf of those who are homeless or threatened with homelessness.

The revised statutory deadline is the latest possible date by which the statement is to be published and Scottish Ministers will seek to commence the consultation and publish the statement just as soon as it is appropriate and responsible to do so.

Contact: Stephen O'Connor, Homelessness Measurement and Legislation Unit, Better Homes Division, Scottish Government. Email: Stephen.O'Connor@gov.scot

Other measures in response to coronavirus

Extend the duration of listed building and conservation area consents for applications which are due to expire in the period until 31 March 2021

The Coronavirus (Scotland (No. 2) Act 2020 provides that if a listed building or conservation area consent was to lapse during the 'emergency period' then the period within which development is to be commenced is extended. This applies whether the original duration of the consent is as specified in legislation or has been set by a direction made by the planning authority when granting permission.

The "emergency period" is the period beginning with the coming into force of the provisions and ending on 31 March 2021. Where a consent would expire during the "emergency period", then that consent will not lapse until the end of an extended period which ends on 30 September 2021, irrespective of that development having not been commenced. The permission will only lapse if development has not commenced before the end of the extended period.

The Act provides Scottish Ministers with the power to amend the duration of the emergency and extended periods if required by regulations.

It is not expected that authorities will need to take any action other than to share this with stakeholders to ensure they are aware of the potential change to the date at which their consents will expire.

Contact: Hannah Garrow, Team Leader, Culture and Historic Environment Division, Email: chedcovid19@gov.scot

Electronic registration in the Register of Inhibitions and the Register of judgments

The measures in Schedule 4, Part 3 address risks faced by parties impacted by the closure of the Register of Inhibitions and the Register of judgments.

The inability to register the full range of documents in these registers creates issues around recourse to debt recovery and access to justice in Scotland.

The provisions enable the Keeper to accept for registration in those registers, the full range of documents or copies of documents submitted electronically. This will allow applications by a means and in a form which will be specified on the Registers of Scotland website.

This broadly mirrors those provisions within the first Act relating to electronic submission to the property registers and does not affect any existing ability to submit for registration a document or copy document in electronic form.

Further details on the practical measures of how applications will be made under the provisions and the contingency measures currently in place can be found at <https://www.ros.gov.uk/coronavirus-covid-19>

Contact: Harry Murray, Registers of Scotland
Email: harry.murray@ros.gov.uk

Care Services: Giving of Notices by the Care Inspectorate

Aims of the provision

Schedule 4, part 4 is introduced by section 5 of the Act. It confirms the Care Inspectorate has power to send formal notices to registered care service providers and those seeking to provide a care service by electronic means for the duration of the emergency period.

Under normal circumstances, formal notices are issued via normal postal services or are hand delivered. Presently, this is not possible due to the Care Inspectorate following public health guidance, and staff not having access to premises to carry out this function.

This provision enables the Care Inspectorate, normally a team or service manager, to issue any notice by email, or to publish notices on a website when required. The Care Inspectorate may also, if required, give physical notice to a wider group of relevant people including, for example the care home manager.

This function will help to expedite the process, at a time when it can be even more important to deliver notices in a timely manner.

Practicalities

It will be for the Care Inspectorate to decide on the most appropriate means of communication, including how best to send and receive any notice, taking into account matters such as the recipient's expectations.

Contact: Kevin Fallon, Directorate for Community Health and Social Care, Scottish Government. Email: Kevin.Fallon@gov.scot

Land and Buildings Transaction Tax (LBTT): extension of period for disposal of previous main residence

The Act increases from 18 to 36 months the time within which certain taxpayers can dispose of a previous main residence and reclaim the LBTT Additional Dwelling Supplement (ADS). The provisions apply to taxpayers who paid the ADS in relation to a transaction with an effective date of between 24 September 2018 and 24 March 2020 (inclusive).

Given the current uncertainty about the extent and duration of any disruption to the housing market that is related to the coronavirus outbreak, the Act enables the Scottish Ministers to make subordinate legislation amending these provisions. They can be amended to further extend the period within which the disposal must take place, or to apply the provisions to transactions with an effective date falling within a longer period of time. These powers may only be exercised where the Scottish Ministers are satisfied that it would be appropriate to do so for a reason related to coronavirus.

For further information, guidance is available on the Revenue Scotland website at <https://www.revenue.scot/news/covid-19/ads-repayment-claims>

Non-domestic Rates

Section 6 makes two technical changes to non-domestic rates relief for 2020-21. This allows non-domestic rates relief to be remitted for the whole of 2020-21 and separately adds the category of newspaper offices to the Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 (S.S.I. 2020/101) from date of Royal Assent.

Contact: Anouk Berthier, Local Government Finance, Local Taxation Policy & Business Rates Unit, Scottish Government. Email: Anouk.berthier@gov.scot

Execution Of Documents, Etc.

Schedule 4, part 7 of the Act contains provisions which allow Scottish notaries public, solicitors and advocates the ability to execute remotely, by electronic means such as live video connection, documents which have a "physical presence" requirement (either for the purposes of subscription or the administration of an oath,

affirmation or declaration; or both) for the period of the validity of the restrictions contained in the Coronavirus (Scotland) (No.2) Act 2020.

Contact: Jamie Wilhelm, Access to Justice Unit, Scottish Government.
Email: Jamie.Wilhelm@gov.scot

Low emission zones

Schedule 4, Part 9 on low emission zones states that:

13(1) This paragraph applies in relation to Low Emission Zones in Part 2 of the Transport (Scotland) Act 2019.

(2) The Scottish Ministers must lay a report before the Scottish Parliament on progress towards establishing low emission zones by 4 December 2020.

(3) A report under sub-paragraph (2) must include information on—
(a) how progress has been impeded by coronavirus,
(b) how account has been taken of the impact Low Emission Zones would have on the public health response to coronavirus.

Actions for Scottish Government

The actions of Part 9 of the Act relate only to the Scottish Government; there is no additional reporting requirements placed on local authorities or other public bodies beyond what is already stated in the Transport (Scotland) Act 2019.

The Scottish Government must :

- Lay a report in Parliament by 4 December 2020 on the progress being made towards establishing Low Emission Zones under the Transport (Scotland) Act 2019. The report should contain:
 - an assessment of how progress has been impeded by coronavirus, which is pertinent given that the Low Emission Zone Leadership Group announced a pause to Low Emission Zones implementation on the 7 May and
 - how account has been taken of the impact Low Emission Zones would have on the public health response to coronavirus. The main emphasis on this point relates to a mix of policy being developed by both the Scottish Government and local authorities in tandem with financial support being provided by the Scottish Government.

Contact: Dr. Stephen Thomson, Head of Air Quality, Transport Scotland.
Email: Stephen.thomson@transport.gov.scot

Measures related to Council Tax and unoccupied properties

When introduced, the Act did not include provisions related to council tax. However during the passage of the Act, an amendment was lodged relating to council tax and unoccupied properties, which the Parliament agreed. This amendment changes the Council Tax (Exempt Dwellings) (Scotland) Order 1997.

In broad terms under the 1997 Order properties that are occupied solely by:

- students;
- a student's spouse or dependant(s);
- school leavers; or
- people under the age of 18;

are exempt from having to pay council tax.

The 2020 Act creates an exemption for a property that was exempt due to being occupied by the groups above, and which then became unoccupied on or after 17 March 2020 for a reason relating to coronavirus. From (and including) the 27 May such a property is exempt from paying council tax until it is occupied or the provisions in the Act come to an end.

The 2020 Act adds a new paragraph (paragraph 12A) into the schedule 1 list of exempt dwellings in the 1997 Order. Under this paragraph a property is exempt if it is:

- “12A. A dwelling which—
- (a) became unoccupied for a reason relating to coronavirus on or after 17 March 2020,
 - (b) was, immediately prior to becoming unoccupied, an exempt dwelling under paragraph 10 or 12 above, and
 - (c) remains unoccupied.”

This measure does not apply retrospectively. However, almost all properties in this group will have been covered by the 4 month exemption already in place, as set out in paragraph 11 of schedule 1 of the 1997 Order. Once the 2020 Act ceases to be in force the usual exemption rules under paragraphs 10, 11 and 12 of the 1997 Order will apply.

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Traffic regulation

Paragraph 15 of Schedule 4 to the Act makes changes to the maximum duration of certain temporary traffic regulation orders (TTROs). TTROs are made under section 14(1) of the Road Traffic Regulation 1984 Act (“the 1984 Act”) and may temporarily restrict or prohibit the use of roads for various reasons such as road works, danger to the public and litter picking. Section 15(1) of the 1984 Act sets out the maximum duration for TTROs and this has been extended by the Act for certain types of road from 6 months to 18 months. The affected roads are existing footpath, bridleway, cycle track or byway open to all vehicles. In the main, they are roads which are not

used by motorised vehicles although in some more rural areas there may be byways which are predominantly used as footpath or bridleway but which also carry a right of passage for vehicles. This brings the maximum duration of temporary restrictions or prohibitions on these types of route in line with the maximum duration of TTROs on all other roads.

This does not alter the length of time that a temporary (“pop-up”) cycle track or pedestrian walkway may be placed where it is created by reallocating existing vehicle carriageway to pedestrians and cyclists, as that is already subject to the 18 month maximum in section 15(1)(b) of the 1984 Act.

The Scottish Government issued guidance to local authorities on 28th April 2020 on using TTROs to support ongoing physical distancing measures and the potential need to close roads to traffic or reallocate road space in favour of pedestrians and cyclists allowing for physical distancing measures and active travel. This guidance is available here: <https://www.transport.gov.scot/media/47432/coronavirus-covid-19-guidance-on-temporary-traffic-regulation-orders-and-notices.pdf>

New restrictions on the provision of coronavirus-related grants to companies connected with tax havens

Under the provisions in Schedule 4, Part 11, businesses with certain connections to tax havens may no longer receive coronavirus-related grants from Scottish Ministers.

This rule will apply to all grants for which applications are made on or after 27 May 2020, whether under existing or future coronavirus financial schemes. It does not apply to applications received before that date, even if the related grant is not paid until afterwards.

What is a grant for this purpose?

A grant refers to a grant of cash (of any amount) for the specific purpose of giving support in relation to the coronavirus crisis. Coronavirus-related grants are those which are made to mitigate the effects on a business of disruption attributable to coronavirus.

This measure does not apply to: tax reliefs, loans, loan guarantees, provision of goods or services or release of a debt.

Also, it does not apply to any funding that is not specifically related to coronavirus.

Which Scottish bodies are affected?

The rule applies to the core Scottish Government and other constituent parts of the Scottish Administration (e.g. SG Executive Agencies and non-ministerial departments).

It also applies to local authorities and other organisations, such as bodies sponsored by the Scottish Government, that provide coronavirus-related grants using Scottish Government funding.

Which recipients of grants are affected?

The restrictions apply only to grants made to companies. Grants to individuals or partnerships will not be affected.

Before a coronavirus grant can be made, a company must be able to confirm that all of the following conditions apply:

- The company is not based in a tax haven;
- The company is not a subsidiary of a company that is based in a tax haven;
- The company is not a parent company of a company that is based in a tax haven; and
- The company does not participate in a tax arrangement that results in some or all of its profits being taxed in a tax haven. “Arrangement” refers to planning schemes put in place for tax purposes, rather than a genuine commercial profit stream.

What is a tax haven?

For the purpose of this measure, tax havens are defined as those listed in the EU List of Non-Cooperative Jurisdictions for Tax Purposes, which are currently as follows:

- American Samoa
- Cayman Islands
- Fiji
- Guam
- Oman
- Palau
- Panama
- Samoa
- Trinidad and Tobago
- US Virgin Islands
- Vanuatu
- Seychelles

Actions for Scottish bodies (for applications received on or after 27 May 2020)

All coronavirus-related grants to a company must be made conditional on the tax havens conditions being satisfied. Recipients must provide a signed declaration to this effect for every grant that is made and funds must not be released until such a declaration has been received. If a company is unable to provide the signed declaration, a grant cannot be provided.

All grants must also be subject to a clawback provision so that the funds can be recovered if it is later discovered that the conditions were not in fact met. Where appropriate, grant-making bodies may consider the use of a charge over assets to secure recoverability (as set out in the Scottish Public Finance Manual).

Grant-making bodies will wish to:

- Make appraisers and teams aware of this new requirement;
- Update systems, templates and internal guidance; and
- Consider communicating this change to affected external stakeholders.

Monitoring and enforcement requirements

The signed declaration of compliance from each grantee must be retained by the grant-making body for a period of 6 years.

Grant appraisers should include consideration of this measure in their normal due diligence processes, which may vary between bodies.

Processes for review and recovery of a grant in the event that an inaccurate compliance declaration is identified should be planned for each grant-making body.

Further information and operational guidelines

In the first instance, grant-making bodies should consult their usual financial governance contact.

The Scottish Government's Tax Division leads on policy issues related to this measure and is working to develop guidance to support its operation. They can provide additional assistance on areas of policy complexity.

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