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Coronavirus Acts: third report to Scottish Parliament

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Executive Summary

Overview

As we set out in our previous two-monthly reports on the Coronavirus Acts, in seeking the Parliament's approval for the necessary legislation to respond to the coronavirus pandemic, the Government has always been clear that the legislation agreed by Parliament should be proportionate to the challenge and last only as long as required and that the Scottish Parliament must have continued oversight of those provisions and hold Scottish Ministers to account for their use. This has continued to be central to the implementation, monitoring and review of the legislation, and will remain so beyond this third report covering the reporting period up to 30 September 2020.

Our first report was published a short time after the publication on 21 May 2020 of 'Coronavirus (COVID-19): Scotland's route map through and out of the crisis' (the 'Route Map'). At the end of the third reporting period, we remain in phase three of the Route Map. Since our second report was published on 11 August 2020, additional restrictions, as announced by the First Minister on 22 September 2020, have been put in place in order to bring COVID-19 back under control as we enter winter.

Our position has always been that creating additional powers does not automatically mean we will be required to use them and that decisions would be taken at the appropriate time, based on the situation here in Scotland and other parts of the UK. Through this and our previous reports, we have demonstrated that the powers in the legislation continue to be used proportionately and only where necessary.

It remains the case that some provisions have not yet been commenced as there has not been a need to do so, or have commenced but have not been required to be used in practice. In some cases, this is because these powers will be an important tool in supporting the lives and health of people living in Scotland, the economy, the public sector, and the third sector as we continue to progress through the Route Map. In other cases, the powers are judged to continue to be necessary because they may be required to respond to a future resurgence of the virus – which remains a very real risk, even as we have taken urgent action and put in place new restrictions in order to stem the recent rise in cases and bring COVID-19 back under control.

Since our last report to Parliament, regulations to extend the expiry dates of Part 1 of the Coronavirus (Scotland) Act 2020 (the 'first Scottish Act') and the Coronavirus (Scotland) (No.2) Act 2020 (the 'second Scottish Act') from 30 September 2020 to 31 March 2021 have been made and came into force on 29 September 2020. In taking the decision to seek to extend both Scottish Acts, we gave careful consideration to the requirement to balance the needs of many stakeholders and partners who wish to see the powers remain available, against the commitment given when the Acts were introduced that the powers would not remain in place unless necessary.

Regulations to expire certain provisions within Part 1 of the Scottish Acts which were deemed to no longer be needed beyond 29 September 2020 and which would not

therefore be covered by an extension, also came into force on 29 September 2020. Expiring provisions which were no longer required and suspending through separate regulations provisions which are not required at this time - but may be required at a future point - reflects the commitment given when the legislation was introduced that powers should not be in place for longer than they are needed. The approach we have taken was judged to be proportionate and appropriate to the scale of the ongoing risks posed by coronavirus.

The continued necessity of the legislation will of course be kept under review throughout the reporting process. It is also important to note that, throughout the six month extension period to 31 March 2021, if provisions under the Scottish Acts are deemed to be no longer necessary during that time, they could be subject to suspension (with subsequent revival) or early expiry.

The Scottish Government 'Coronavirus (COVID-19): framework for decision making' which was published in April 2020 set out seven core principles across our approach to responding to coronavirus (COVID-19). One of these was 'fair and ethical': committing us to uphold the principles of human dignity, autonomy, respect and equality, as we deal with the pandemic. In continuing to develop our approach to legislation and reporting, human rights and equality impacts have continued to be a key consideration.

We remain committed to ensuring transparency in the implementation of, and reporting on, the legislation, but we equally continue to be cognisant of the important balance to be struck in the processes for obtaining information to support openness and transparency, with the need to avoid undue pressures to provide information on those at the frontline of the coronavirus response. We have therefore continued in this report, our approach of going beyond the statutory reporting requirements, by providing additional information for provisions which, at this time, we have judged to be of most significant impact and/or interest because of their impact on human rights, children's rights or equality, or because they are areas in which the Scottish Parliament has indicated a particular interest.

Coronavirus legislation: our approach to reporting

We have always made clear that it would be essential that this legislation be supported by safeguards including regular reporting and review, and these were built into the first and second Scottish Acts. Section 15 of the first Scottish Act, and section 12 of the second Scottish Act require Scottish Ministers to review the operation of the provisions of Part 1 of those Acts in each reporting period, and every two months, report on the status of the provisions and make a statement that they are satisfied that the status of those provisions is appropriate.

The Coronavirus Act 2020 ('the UK Act') does not contain equivalent reporting requirements for the Devolved Administrations to those which require the UK Government to report on its non-devolved provisions every two months. However, as was the case in our previous reports, we have reported in this third review period on the provisions of the UK Act for which the Scottish Parliament gave legislative consent, in a manner which is consistent with the reporting on the Scottish Acts, and which is in line with our previous commitment to do so.

This report therefore includes information on the status and operation of the provisions under Part 1 of the first and second Scottish Acts in this reporting period, and the provisions of the UK Act for which the Scottish Parliament gave legislative consent. It also includes reporting on Scottish Statutory Instruments (SSIs) made by Scottish Ministers where the main purpose relates to coronavirus, other than those made by Scottish Ministers under the first or second Scottish Acts or the UK Act, as SSIs made under those Acts are already included in our reporting.

This report also reflects the duties set out in section 15A of the first Scottish Act and section 13 of the second Scottish Act, that require Scottish Ministers to take account of information from the Scottish Police Authority or the Chief Constable of the Police Service of Scotland about “the nature and the number of incidents of domestic abuse occurring during the reporting period to which the review relates”, and to explain in the report on that review period, how the information was taken into account. We are clear of the need to ensure that robust and regular exchange of information about incidences of domestic abuse is collected and monitored during the pandemic and we were pleased to support these duties. This ensures that the specific impact that the current situation is having on those experiencing domestic abuse is considered when reviewing the operation of the provisions in the Scottish and UK Acts.

We have, in the development of this third report, continued to reflect on the views and publications of key stakeholders whose focus is on the areas of human rights, children’s rights and equality impacts. We also recognise views of the Parliament’s Equalities and Human Rights Committee which is paying particular attention to this in relation to the Government’s response to the pandemic through its inquiry into the impact of the pandemic on equality and human rights. We are grateful for the work that is being undertaken by the Parliament, stakeholders and others in scrutinising the work of the Scottish Government to ensure that human rights, children’s rights and equality are protected at this time. We will continue to work to ensure that we consider carefully recommendations and best practice coming from this.

Use of powers contained in the Coronavirus Acts

Some of the powers in the legislation which were commenced immediately have supported key elements of our response to the pandemic, whilst others have not been needed due to effectiveness of other action taken or because thresholds for use have not been met.

The UK Act enables Ministers to consider suspension and revival of certain powers where they may be needed again in future. It also enables Ministers to permanently expire certain provisions which are considered to no longer be needed in advance of the two year sunset clause in section 89 of that Act, and to extend certain provisions beyond the two year sunset period.

The first and second Scottish Acts contain similar provisions for suspension and revival, and provisions can be considered for expiry in advance of the six month sunset provision which applies to Part 1 of the first and second Scottish Acts. Part 1 of both Acts can be extended for a further six months to 30 September 2021 through regulations subject to the agreement of Parliament. Taken together, these safeguards help to ensure the powers in the legislation can be used appropriately

and proportionately, and that the powers do not remain in force longer than they are required.

The regular reporting cycle for the provisions of the Scottish and UK Acts will enable us to keep the overall operation of the powers under review and inform decisions on when specific measures are no longer needed. Our decisions will be guided by the course of the pandemic and by the expert advice underpinning the Scottish Government's overall response to it.

Statement by Ministers on necessity and status of provisions

Scottish Ministers have undertaken a review of the operation of the provisions of Part 1 of the first and second Scottish Acts, and the provisions of the UK Act for which the Scottish Parliament gave legislative consent, in order to consider whether the provisions remain necessary. Ministers are satisfied that the status of those provisions at the end of this reporting period is appropriate.

Scottish Ministers have also undertaken a review of the Scottish Statutory Instruments (SSIs) to which section 14 of the second Scottish Act applies. Ministers are satisfied that the status of those SSIs at the end of the reporting period is appropriate. This report contains information as required by section 14 of that Act.

As at the end of the reporting period on 30 September 2020, all of the provisions in the UK Act for which the Scottish Parliament gave legislative consent have been commenced, with the exception of those in section 10 and schedule 9, and sections 25-29.

All provisions in the first Scottish Act commenced the day after Royal Assent, with the exception of paragraph 11(1) of schedule 3 which had not commenced in the period since Part 1 of the first Scottish Act came into force, and which has now been expired through the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 (the 'expiry regulations'). All provisions in the second Scottish Act commenced the day after Royal Assent.

The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 (the 'extension regulations') which extend the expiry date of Part 1 of both Scottish Acts from 30 September 2020 to 31 March 2021, came into force on 29 September 2020.

The expiry regulations which expire provisions under Part 1 of both Scottish Acts which were judged not to be required also came into force on 29 September 2020.

Separate regulations have been made to suspend schedule 3, Part 2, paragraph 11(2) and (3) of the first Scottish Act which relate to adults with incapacity provisions, and schedule 7, paragraphs 32 and 33 of the first Scottish Act which relate to muirburn.

Additional information

Within the material for each of the provisions covered in the report, links have been included to other relevant published material including declarations and directions relating to, or made under the powers in the Acts.

Next steps

We welcome the opportunity to further update the Scottish Parliament on the operation of the Coronavirus Acts and stand ready to engage with the Parliament in its scrutiny of this third report.

Michael Russell MSP

Cabinet Secretary for Constitution, Europe and External Affairs

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1. Introduction

- 1.1. As required by section 15 of the Coronavirus (Scotland) Act 2020 (the ‘first Scottish Act’), and section 12 of the Coronavirus (Scotland) (No. 2) Act 2020 (the ‘second Scottish Act’), Scottish Ministers have conducted a review of the provisions in Part 1 of those Acts and have prepared this report. A review has also been conducted of the provisions of the Coronavirus Act 2020 (the ‘UK Act’) for which the Scottish Parliament gave legislative consent and these provisions are also covered within this report.
- 1.2. The first report to the Scottish Parliament on the Coronavirus Acts¹ was published on 9 June 2020 and the second report² was published on 11 August 2020. This third report covers the period 1 August to 30 September.
- 1.3. As per the requirements of section 15 of the first Scottish Act, and section 12 of the second Scottish Act, this report includes information on the operation of the provisions of Part 1 of each of those Acts. It also includes an update on the status of those provisions, and confirmation that Scottish Ministers are satisfied that the status of those provisions is appropriate.
- 1.4. This report covers the reporting requirements to reflect the duty in reporting that requires Scottish Ministers to take account of information about “the nature and the number of incidents of domestic abuse occurring during the reporting period to which the review relates” and explain in the report on that review how the information was taken account of. The report also covers the reporting requirements relating to Scottish Statutory Instruments (SSIs) made by Scottish Ministers where the main purpose relates to coronavirus, excluding those made by Scottish Ministers under the first or second Scottish Act or UK Act. Further information on those additional reporting requirements is included at section five.

2. Background

Reporting requirements

- 2.1. The UK Act received Royal Assent on 25 March 2020. The Scottish Parliament gave its consent to the provisions of the UK Act as far as they relate to devolved matters on 24 March 2020.
- 2.2. Section 97 of the UK Act sets out the requirements for the UK Government to report on the status of non-devolved provisions within the UK Act every two months.
- 2.3. The UK Act does not set out an equivalent statutory requirement for reporting by the Scottish Government or other Devolved Administrations. However, as per the

¹ Coronavirus Acts: first report to Scottish Parliament - <https://www.gov.scot/publications/coronavirus-acts-two-monthly-report-scottish-parliament/>

²Coronavirus Acts: second report to Scottish Parliament - <https://www.gov.scot/publications/coronavirus-acts-second-report-scottish-parliament/>

approach in our previous reports to the Scottish Parliament, in this third report we have included information on the provisions of the UK Act for which the Scottish Parliament gave legislative consent, in a manner which is consistent with the reporting arrangements for Part 1 of both of the Scottish Acts.

Extension and expiry of the Scottish Acts

- 2.4. Under section 12 of the first Scottish Act and section 9 of the second Scottish Act, Part 1 of both Acts were due to expire on 30 September 2020.
- 2.5. Part 1 of the Scottish Acts can only be extended in their entirety and not on a provision by provision basis. This can only be done through regulations with the agreement of the Parliament, and anything that should not be extended has to be expired through separate regulations.
- 2.6. On 24 August 2020, the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020³ (the 'extension regulations') were laid in draft before the Parliament, together with a Statement of Reasons⁴ for the regulations. The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020⁵ (the 'expiry regulations') were laid in Parliament on the same day. Both sets of regulations came into force on 29 September 2020.
- 2.7. The extension regulations extend the expiry date of Part 1 of both Scottish Acts to 31 March 2021. The expiry regulations, expired paragraphs of those Acts which were no longer required beyond 29 September 2020.
- 2.8. In taking the decision to seek to extend both Scottish Acts, Scottish Ministers gave careful consideration to the requirement to balance the needs of many stakeholders and partners who wish to see the powers remain available, against the commitment given when the Acts were introduced that the provisions would not remain in place unless necessary. Expiring provisions which were no longer required, and suspending through separate regulations⁶ provisions which are not required at this time - but may be required at a future point - reflects the commitment given when the legislation was introduced that powers should not be in place for longer than they are needed. The approach that was taken was judged to be proportionate and appropriate to the scale of the ongoing risks posed by coronavirus.
- 2.9. Further information is included within the Policy Notes which accompany the regulations, and in the Statement of Reasons which is published on the Scottish

³The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/299/contents/made>

⁴ Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 - proposed extension: statement of reasons - <https://www.gov.scot/publications/proposed-extension-coronavirus-scotland-act-2020-coronavirus-scotland-no-2-act-2020-statement-reasons/>

⁵ The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/249/introduction/made>

⁶ The Coronavirus (Scotland) Act 2020 (Suspension: Muirburn) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/260/regulation/2/made>

The Coronavirus (Scotland) Act 2020 (Suspension: Adults with Incapacity) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/267/made>

Government's website. Table One of this report includes information on which provisions of Parts 1 of the Scottish Acts have been expired and suspended.

3. Our approach to reporting

- 3.1. In continuing to develop our approach to reporting, we have recognised that some measures in the legislation may have greater impact than others in terms of their potential impacts on individuals or groups (people with one or more of the protected characteristics listed in the Equality Act 2010), or their implications more generally for equality and rights. Some provisions are of significant interest to the Scottish Parliament for other reasons.
- 3.2. In addition to the information on operation and status which is provided for all of the above noted provisions, we have also reported in more detail on those provisions which we consider to be, at this time, of most significant impact or interest. For these provisions in particular, we have gone beyond the reporting requirements under the legislation, for example, by providing detail on the factors which have been considered in determining the continued necessity. This is consistent with our approach in our previous reports.
- 3.3. Assessment of the equality, human rights and children's rights impacts of the provisions is a central aspect of our review and reporting approach, and in developing our report we have again sought to examine these impacts. We have in this reporting period continued to reflect on the views and publications of key stakeholders with an interest in the areas of human rights, children's rights and equality impacts. This has included, but is not limited to, consideration of the written and oral evidence which was submitted to the Parliament's COVID-19 Committee in response to its call for evidence on the Scottish Acts extension and expiry regulations. We have considered the views of other stakeholders in this reporting period, including the British Institute of Human Rights, the Scottish Human Rights Commission and the Children and Young People's Commissioner Scotland, and we also recognise the interest and views of the Parliament's Equalities and Human Rights Committee.
- 3.4. While it is the view of the Scottish Government that any remaining impacts on rights and equality are currently justified and are a proportionate means of helping to achieve the legitimate aim of reducing the very significant public health risks posed by coronavirus, the Scottish Government also recognises that these measures are only required to respond to the current set of circumstances, and are only necessary as long as the potential public health benefits justify any negative impacts caused. The commitment to ensure that powers should not be in place for longer than they are needed was demonstrated in the decision to expire a number of paragraphs of Part 1 of the Scottish Acts which were judged not to be required beyond 29 September 2020 as part of the overall extension of the Acts, and to suspend other paragraphs of those Acts which are not currently required, but may be required at a future point.
- 3.5. One specific example of where rights and equality implications have informed decisions on the continued necessity of provisions in the legislation was the

decision to expire paragraph 11(1) of schedule 3 of the first Scottish Act relating to adults with incapacity. As set out at paragraph 19 of the Policy Note⁷ which accompanied the expiry regulations: “in considering whether this paragraph should be expired early, the Scottish Government has examined very carefully the considerations in relation to human rights”. The expiry of this paragraph was welcomed by the Scottish Human Rights Commission (SHRC), as set out in a written submission by SHRC to the COVID-19 Committee on 16 September 2020⁸. Other stakeholders have also supported the expiry of this paragraph. Prior to being expired, the paragraph had not been commenced and had not been in operation since the first Scottish Act came into force on 7 April 2020. This was reflected in the reporting on these provisions in our first and second reports to Parliament on the Coronavirus Acts.

- 3.6. We have also, in this report, included examples of how equality impacts have been, and are being, considered in relation to the implementation of particular powers, including the Equality Impact Assessments which have been carried out for the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations from No.2 to most recently No.13⁹ and the EQIA for the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020¹⁰. This report also includes information on how the impact of the powers relating to evictions from dwelling houses under the first Scottish Act, and pre-action requirements under the second Scottish Act, have been considered.
- 3.7. We will keep our approach to reporting on these impacts under review in line with legislation and in response to the views of the Scottish Parliament.

4. UK Government reporting and engagement

- 4.1. The UK Government published its third report¹¹ on the status of the non-devolved provisions of the UK Act on 1 October 2020. Its first two-monthly report¹² was published on 29 May 2020 and its second two-monthly report was published on 31 July 2020¹³.

⁷ The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 - https://www.legislation.gov.uk/ssi/2020/249/pdfs/ssipn_20200249_en.pdf

⁸ Submission from SHRC to COVID-19 Committee -

<https://www.parliament.scot/Meeting%20Papers/20200916CVDMeetingSubmissions.pdf>

⁹The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 13) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/261/resources>

¹⁰The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/279/resources>

¹¹ Coronavirus Act report: September 2020 - <https://www.gov.uk/government/publications/coronavirus-act-report-september-2020>

¹² Coronavirus Act report: May 2020 - <https://www.gov.uk/government/publications/coronavirus-act-report-may-2020>

¹³Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020: July 2020 <https://www.gov.uk/government/publications/coronavirus-act-report-july-2020/two-monthly-report-on-the-status-on-the-non-devolved-provisions-of-the-coronavirus-act-2020-july-2020>

- 4.2. The UK Act has a sunset provision by which it expires two years after the day it was passed, on 25 March 2022, subject to certain exceptions which are set out in the legislation.
- 4.3. As required under the UK Act, the House of Commons undertook a review of its non-devolved provisions after six months of operation and debated a motion on 30 September 2020 “that the temporary provisions of the Coronavirus Act 2020 should not yet expire”.
- 4.4. The devolved provisions in the UK Act were not in scope of the House of Commons six month review. However, review of their status, operation and continuing necessity is part of the Scottish Government’s two-monthly reporting to the Scottish Parliament, which provides the Parliament with an opportunity to scrutinise the judgements which have been made in the operation, and assessment of the continued necessity of those provisions.
- 4.5. We are continuing to engage and work with the UK Government and other Devolved Administrations on the implementation and operation of the UK Act and to help ensure respective reporting arrangements operate successfully and appropriately alongside each other, to support robust and effective scrutiny of the legislation.

5. Further reporting

Coronavirus related SSIs

- 5.1. Section 14 of the second Scottish Act requires Scottish Ministers to report on SSIs made by Scottish Ministers where the main purpose relates to coronavirus. This provision does not apply to SSIs made by Scottish Ministers under the first or second Scottish Acts or the UK Act. Information on SSIs, to which section 14 of the second Scottish Act applies, is included at section eight of this report. In this report we have included information on a total of 49 SSIs which are in scope for reporting under section 14 of the second Scottish Act.

Information about domestic abuse

- 5.2. Section 15A of the first Scottish Act and section 13 of the second Scottish Act require Scottish Ministers to 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, given to them, or published by the Scottish Police Authority, or the Chief Constable of the Police Service of Scotland. Further, Scottish Ministers are required to explain in the report on that review, prepared under section 15 of the first Scottish Act and section 12 of the second Scottish Act, how the information was taken account of. The legislation does not require this information to be taken into account in the review of the powers under the UK Act, however we have made a decision to do so in order to ensure consistency in our approach and ensure the fullest possible consideration is given to this information.

- 5.3. In terms of our requirements under the legislation, consideration has been given to the provisions in the Scottish and UK Acts where domestic abuse may be deemed relevant. An example of a provision which this information is most relevant to is section 3, schedule 2 and Part 1 of the second Scottish Act on the expiry of undertakings under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016. Data on incidents of domestic abuse for April-July 2020 highlights the continued importance of the provisions relating to the expiry of undertakings in order to preserve victim safety, particularly in sensitive cases of domestic abuse while self-isolation guidance for people infected with, or living with people infected with coronavirus, remains in place.
- 5.4. Where information on the nature and number of incidents of domestic abuse may be deemed of relevance to a provision, this has been considered as part of the assessment of whether the provision remains necessary. The view remains that whilst this information has not impacted on the outcome of the assessment of whether those provisions remain necessary, it remains a valued and necessary part of this process.
- 5.5. The latest information from Police Scotland to support the review was published on 24 September 2020, as part of the Scottish Government Justice Analytical Services data report on how the coronavirus pandemic has affected the justice system¹⁴. The number of domestic abuse incidents recorded by the police in August 2020 was above the level seen in August 2019. Looking cumulatively across April to August 2020, incidents were 8% higher than the equivalent period in 2019.
- 5.6. The Scottish Government response throughout the coronavirus emergency situation continues to ensure that the health, wellbeing and safety needs of women and children are met and we are working closely with partners to ensure this happens. Available information on domestic abuse incidents, reinforces the need to ensure that our response to domestic abuse is effective and that those at risk are being supported. In addition to the available information from Police Scotland on incidents of domestic abuse, research published by Justice Analytical Services over phases one to three of the Route Map, provides us with further insight on the particular impact coronavirus has had on those experiencing domestic abuse¹⁵. We continue to review the Scottish Government guidance relating to domestic abuse which was initially published in May 2020 and accompanied the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. The guidance clearly sets out that none of the restrictions, including those relating to Local Authority areas should prevent anyone from seeking help.

¹⁴ Justice Analytical Services Coronavirus (COVID-19) Data Report: August 2020 edition - <https://www.gov.scot/publications/coronavirus-covid-19-justice-analytical-services-data-report-august-2020/>

¹⁵ Coronavirus (COVID-19): domestic abuse and other forms of violence against women and girls during Phases 1, 2 and 3 of Scotland's Route Map (22 May to 11 August 2020) - <https://www.gov.scot/publications/coronavirus-covid-19-domestic-abuse-forms-violence-against-women-girls-during-phases-1-2-3-scotlands-route-map-22-11-august-2020/>

- 5.7. As our understanding of the impact of coronavirus on those experiencing domestic abuse evolves, so must our approach to tackling these issues and refreshed guidance for Local Authorities on tackling violence against women and girls during COVID-19 was published in conjunction with the Convention of Scottish Local Authorities (COSLA) in September¹⁶.
- 5.8. The Scottish Government is aware that front line services have also moved rapidly to support victims and survivors in a different and uncertain environment. The Scottish Government announced earlier this month that women and children experiencing, or at risk of violence and domestic abuse, will have increased access to support, with £4.25 million of additional funding for charities and projects across Scotland. The additional investment will help respond to an increase in demand from victims of abuse for support services during the coronavirus pandemic. More staff, increased hours for centres and helplines, improvements to IT and new digital resources and training will all allow services to be up-scaled so that more people can quickly and easily access help.
- 5.9. Beyond the immediate coronavirus response, the Scottish Government is committed to improving protections for women and children at risk of or experiencing domestic abuse. To support this, we announced in the Programme for Government 2020-21, a Bill to provide new powers to impose restrictions on a suspected perpetrator of domestic abuse, including removing them from a home they share with a person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect. The Bill will also facilitate processes for changes to be made to social housing tenancy agreements to help victims stay in their own home by giving powers to remove perpetrators from tenancy agreements.
- 5.10. These measures are intended to provide protection for the person at risk and enable them to take steps to address their longer term safety and housing situation, without having to make themselves homeless in order to protect themselves from abuse, removing a barrier to them to stay in their home in the longer term.

Additional reporting requirements

- 5.11. Schedule 1 paragraph 24(3) of the second Scottish Act requires the Scottish Ministers to prepare a report on the steps taken during the reporting period to ensure that marriages and civil partnerships can take place during the emergency period, and the number of marriages solemnised and civil partnerships registered during the reporting period. The first 'Coronavirus (Scotland) (No.2) Act 2020: Report on Marriage and Civil Partnership'¹⁷ was laid in Parliament and published on 17 August 2020. This will continue to be reported on separately and is not included within this report.

¹⁶ Coronavirus (COVID-19) Supplementary National Violence Against Women Guidance (updated September 2020) - https://www.cosla.gov.uk/_data/assets/pdf_file/0030/19668/COVID-19-Supplementary-VAW-Guidance-Sept-2020.pdf

¹⁷ Coronavirus (Scotland) (No.2) Act 2020: Report on Marriage and Civil partnership - <https://www.gov.scot/publications/coronavirus-scotland-no-2-act-2020-report-marriage-civil-partnership/pages/3/>

5.12. Schedule 4, paragraph 12 of the second Scottish Act requires the Scottish Ministers to lay a report before Parliament on their responses to requests for information under the Freedom of Information (Scotland) Act 2020. The first 'Coronavirus (Scotland) (No.2) Act 2020: report on the Scottish Ministers' responses to requests for information under the Freedom of Information (Scotland) Act 2020' was laid in Parliament and published on 7 August 2020. This will continue to be reported on separately and is not included within this report.

6. Status update

- 6.1. Table One below provides detail on the status and operation of the provisions under Part 1 of the first and second Scottish Acts, and the provisions of the UK Act for which the Scottish Parliament gave legislative consent.
- 6.2. This includes information on the paragraphs of provisions which have been expired or suspended in this reporting period.
- 6.3. Where it is indicated in Table One that paragraphs have been expired as they are 'spent provisions', this means that the paragraphs have made amendments to other legislation and therefore the paragraphs themselves no longer need to remain in force. The operation of section 15(2)(d) of the Interpretation and Legislative Reform (Scotland) Act 2010 means that the expiry of these paragraphs will not affect the amendments they have made to other legislation. The effect of the expiry is simply to remove the 'spent' paragraphs in each of the Scottish Acts.
- 6.4. The purpose of the expiry of such paragraphs, even though this does not affect the amendments to other legislation made by those provisions, is to respect the commitment given by Ministers to seek to expire paragraphs as soon as is appropriate.
- 6.5. It was considered appropriate to expire these paragraphs as they are considered to no longer be needed and this will aid clarity in the statute book.
- 6.6. As outlined above, our reporting approach will ensure that the Parliament is given as much information as is available across all of the provisions in the relevant legislation, but with a particular emphasis on those provisions which have been identified as being likely to have the most significant impacts or interest. Where supplementary information has been provided, this is indicated within the 'description of provision' and 'operation of the provision in the reporting period' columns within Table One, and further information is provided at section seven.

Table One – Status and operation of provisions

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
First Scottish Act	Section 2 and schedule 1 - Eviction from dwelling-houses	See section 7.1.1	In operation Supplementary information provided – see section 7.1.1 for further information	Commenced and still in force Regulation making powers used in this reporting period
First Scottish Act	Section 3 and schedule 2 - Temporary extension of moratoriums on diligence	The provisions extend the period of any new moratoria to a period of six months, and removes the limitation that only one such moratorium can be applied for in any twelve month period.	In operation Extended moratorium is available for individuals to apply. As at 31 August 2020, 423 applications for moratoria had been granted under the new powers.	Commenced and still in force No change to status since last reporting period
First Scottish Act	Section 4 and schedule 3 - Children and vulnerable adults – Part 1 – Children	See section 7.1.2	Child protection provisions – in operation Children’s hearings provisions – in operation Looked after children provisions - in operation	Section 4 and schedule 3, Part 1 Paragraphs 1-5 and 7-10 - commenced and still in force Paragraph 6 - expired

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			Supplementary information provided – see section 7.1.2 for further information	Since the last reporting period paragraph 6 has been expired
First Scottish Act	Section 4 and schedule 3- Children and vulnerable adults – Part 2 – Vulnerable adults	See section 7.1.3	<p>Section 11(1) – not in operation</p> <p>Sections 11(2) and 11(3) – in operation during the reporting period but suspended as of 30 September</p> <p>Supplementary information provided – see section 7.1.3 for further information</p>	<p>Section 4 and schedule 3, Part 2</p> <p>Paragraph 11(1) - expired</p> <p>Paragraph 11(2) and (3) - suspended</p> <p>Since the last reporting period paragraph 11(1) has been expired and paragraph 11(2) and (3) has been suspended</p>
First Scottish Act	Section 5 and schedule 4, Part 1 - Courts and tribunals: conduct of business by electronic means	These provisions allow documents produced by a court or tribunal, or connected with criminal or civil proceedings, to be signed and transmitted electronically, removing the requirement for physical	<p>In operation</p> <p>Remote hearings and electronic processes have increased across all areas of criminal and civil business. For civil, they are now the default position: evidential hearings for civil cases are underway; all documents</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		<p>movement and contact. This enables documents to be sent, served and lodged by means of email or other electronic means.</p> <p>The provisions also provide that any participant in either criminal or civil proceedings (judge, clerk, legal representatives, parties to proceedings, accused, convicted persons, appellants and witnesses) can take part in any proceedings by way of live visual (television) or audio (telephone) link from any location.</p>	<p>in civil cases lodged electronically; all civil hearings in the Sheriff Appeal Court conducted remotely; lodging motions by email in the Sheriff Appeal Court; and from 13 July 2020 the All -Scotland Sheriff Personal Injury Court transitioned to a remote basis.</p> <p>The conduct of virtual courtroom trials has been piloted and criminal justice organisations are working together to develop a model for trials to be conducted virtually where appropriate. In High Court and Sheriff and Jury cases, the use of jury centres will enable the conduct of trials by jury while physical distancing requirements remain in force.</p> <p>The Lord President has stated the use of written submissions, the digital transmission of documents and the use of electronic signatures have enabled swift process changes</p>	

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			which are necessary to operate court services efficiently.	
First Scottish Act	Section 5 and schedule 4, Part 2 - Fiscal fines	The provisions enable a wider range of cases to be dealt with by fiscal fine and, thereby, mitigate the impact of coronavirus on the justice system.	<p>In operation</p> <p>In accordance with the revised policy guidance issued by the Lord Advocate in relation to fiscal fines, the increase in fine amounts enables alternative action to be taken in a wider range of cases, where such action is assessed as appropriate by prosecutors. Prosecutors are directed to first consider offering a direct measure, in particular a fiscal fine, in relation to appropriate cases which would otherwise have proceeded in the Justice of the Peace court.</p> <p>The use of fiscal fines under this provision will continue to be monitored by the Crown Office and Procurator Fiscal Service (COPFS). The monitoring will include the numbers of fiscal fines and their levels.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			Due to the statutory framework, and the timescales involved in administering and processing fiscal fines, the impact of the changed fiscal fine scale cannot be fully confirmed at this stage.	
First Scottish Act	Section 5 and schedule 4, Part 3 - Cases beginning with an appearance from custody	The provisions introduce Scotland wide jurisdiction for sheriffs dealing with first appearances from police custody. This enables custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sheriffdom, no matter where the alleged offence took place. The provision also enables the court to hear any continuation of a case, up until a not guilty plea is tendered, if that occurs.	<p>In operation</p> <p>The provisions continue to enable custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sheriffdom, no matter where the alleged offence took place.</p> <p>The provision creates the necessary flexibility to ensure the continued safe and effective operation of custody courts during the coronavirus outbreak while public health guidance remains in place and allows the court to deal with guilty pleas and move them out of the court system, and in doing so, minimise the number of cases that have to be transferred to local court.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
First Scottish Act	Section 5 and schedule 4, Part 4 - Extension of time limits	See section 7.1.4	In operation Supplementary information provided – see section 7.1.4 for further information	Commenced and still in force No change to status since last reporting period
First Scottish Act	Section 5 and schedule 4, Part 5 - Evidence	The provisions allow evidence by statement where a witness is unable to attend court because their attendance at court presents a health risk connected to coronavirus.	In operation However, given that there have been only a very small number of jury trials (they only re-commenced in mid-July) and these provisions are likely to be used mainly in respect of summary trials, it is expected their use has been limited. It is likely that as solemn court business re-commences there will be a greater need for this provision. The provisions are intended to ensure that the inability of witnesses to give evidence in court because, for example, they are self-isolating due to coronavirus, does not unnecessarily prevent criminal trials	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			from proceeding. As such, it is likely to continue to be necessary for as long as public health guidelines around self-isolation and coronavirus remain in effect.	
First Scottish Act	Section 5 and schedule 4, Part 6 - Community orders	<p>The provisions extend time limits for unpaid work in Community Payback Orders (CPOs) by 12 months, and require similar time limits to be imposed in any new orders made.</p> <p>The provisions introduce regulation-making powers for the Scottish Ministers to postpone, vary, or revoke requirements in CPOs or Drug Treatment and Testing Orders.</p>	<p>Schedule 4, paragraphs 12 and 13 - extension of time limits for unpaid work and requirements around time limits for new orders – in operation</p> <p>Schedule 4, paragraphs 14 and 15 - powers to postpone, vary, or revoke requirements in CPOs or Drug Treatment and Testing Orders, which need to be made under the affirmative procedure – not in operation</p> <p>The delegated powers relating to those provisions have not been used to date.</p> <p>Equality and human rights impacts were considered before the commencement of these provisions with the conclusion that adverse</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			impacts on equality or on individual human rights are not anticipated as a result of these provisions.	
First Scottish Act	Section 5 and schedule 4, Part 7 - Parole Board	The provisions allow parole hearings to continue and avoid postponements. They also provide the power for the Chair of the Parole Board to delegate their functions to another member of the Parole Board, should they become incapacitated for any reason.	<p>In operation</p> <p>Parole hearings and casework meetings have continued and during the period 23 March to 11 September 2020:</p> <ul style="list-style-type: none"> • 732 cases were considered at casework meetings by Skype and/or email; • 420 Tribunals and 289 Oral Hearings were successfully conducted; • 467 witnesses provided oral evidence remotely at hearings; and • 26 cases were postponed for Covid related reasons (mostly at the beginning of the pandemic). 	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>
First Scottish Act	Section 5 and schedule 4, Part 8 -	See section 7.1.5	Not in operation	Commenced and still in force

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	Release of prisoners		Supplementary information provided – see section 7.1.5 for further information.	No change to status since last reporting period
First Scottish Act	Section 5 and schedule 4, Part 9 - Legal Aid	The provisions allow for a reduction of the level of scrutiny required before interim payment may be made, enhanced powers of recovery in the event of overpayments resulting from interim payments, and removal of conditions for counsel to be able to apply for interim payment.	<p>In operation</p> <p>A substantial backlog in the court system has resulted from suspension of court business during lockdown. The legal profession will continue to require to draw down interim fees to assist with cashflow in these circumstances.</p> <p>The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020¹⁸ (SSI 220/191), partially commenced on 1 July 2020 and fully commenced on 5 August 2020 to further support these provisions.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

¹⁸The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/sdsi/2020/9780111045510>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
First Scottish Act	Section 6 and schedule 5 – Alcohol licensing and section 7 and schedule 6, Part 1 - Licensing other than alcohol licensing	The Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982 and associated statutory instruments provide the legislative framework to support licensing of activities such as the sale and supply of alcohol and taxi and private car hire. The legislative framework contains strict timescales and deadlines with little or no flexibility available to the relevant authorities. Without legislative change, the impact of the coronavirus would result in people losing their licences through no fault of their own.	In operation Licensing Boards and licensing authorities are responsible for the day to day administration of the civil licensing regimes in Scotland. Information on the operation of the civil licensing regimes and how these powers under the first Scottish Act have been used is not held centrally. Examples of licensing authorities continuing to make use of the provisions include holding virtual licence meetings to progress day to day licensing business due to the coronavirus outbreak and physical distancing requirements. The provisions require to remain in place to enable the licensing regime to function effectively and to ensure, as far as practicable, people do not lose licenses through no fault of their own.	Commenced and still in force No change to status since last reporting period
First Scottish Act	Section 7 and schedule 6, Part 2 –	See section 7.1.6	Section 7, schedule 6, part 2, paragraph 6 - in operation, but has not yet been exercised	Commenced and still in force

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	Freedom of Information (FOI)		<p>Section 7, schedule 6, part 2, paragraph 7 – in operation</p> <p>Supplementary information provided – see section 7.1.6 for further information.</p>	No change to status since last reporting period
First Scottish Act	Section 7 and schedule 6, Part 3 - Duties in respect of reports and other documents	The provision allows statutory reporting requirements to be postponed, and documents to be made available online instead of being made physically available.	<p>In operation</p> <p>These are generic provisions that apply to reporting and publication requirements across the public sector. The suspension of physical publication requirements is in use, since it is not currently possible to provide physical access to documents in all circumstances. The power to postpone reporting should only be used as necessary to enable public authorities to focus on the coronavirus response. Given the aim of reducing undue burdens, it would be disproportionate to request authorities to report on the individual uses of these powers, however the provision continues to be necessary for the reasons set out above.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
First Scottish Act	Section 7 and schedule 6, Part 4 - Local Authority meetings	The provisions allow Local Authorities to exclude the public from Local Authority meetings on public health grounds.	<p>In operation</p> <p>The vast majority of Local Authority meetings being held are being conducted remotely. It is the responsibility of Local Authorities to determine for themselves the governance arrangements they put in place and the Scottish Government has no locus in this decision. However, in the interests of openness, democracy and transparency, the Scottish Government expects and has encouraged Local Authorities to make every effort to reintroduce decision-making structures using technology which also enables the public to view the proceedings online where appropriate.</p> <p>The Scottish Government has liaised with the Improvement Service which has agreed to seek clarity from Local Authorities on the extent of the use of this provision as</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			<p>part of a wider briefing it is preparing on Political Governance Arrangements of councils. This briefing is expected to be available in the autumn. At this stage, it is anticipated that this provision will continue to be necessary until council offices can reopen to the public and/or other relevant aspects of Local Authority business resumes.</p>	
First Scottish Act	Section 7 and schedule 6, and Part 5 - Duties under the Public Finance and Accountability (Scotland) Act 2000	The provisions allow Scottish Ministers, by further regulation, to amend the statutory reporting deadlines of Scottish administration annual accounts.	<p>Not in operation</p> <p>The provisions allow for amendment of the statutory deadlines for annual accounts as set by the Public Finance and Accountability (Scotland) Act 2000. The deadlines for such accounts is 31 December 2020 this year, and 31 December 2021 next year.</p> <p>Although the powers under schedule 6, Part 5 do not currently require to be used, the provisions remain necessary overall as a contingency</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			to ensure if there were a resurgence of the virus, for example, resulting in staff absences, that they could be used if required at that time. It is proportionate and appropriate that this provision remains commenced and still in force, although not operational in this reporting period.	
First Scottish Act	Section 8 and schedule 7, paragraphs 1 to 5 - Social security	See section 7.1.7	<p>In operation</p> <p>These provisions were in operation during the reporting period and paragraphs 1(a), 2, 3 and 4 were expired on 29 September 2020.</p> <p>Paragraphs 1(a), 2, 3 and 4 made textual amendments to the Social Security (Scotland) Act 2018, without limit of time.</p> <p>They are already 'spent' and their expiry will have no impact on the relaxation of timescales for individuals to apply for certain forms of assistance, and to request a redetermination or</p>	<p>Section 8 and schedule 7</p> <p>Paragraphs 1(b) and 5 - commenced and still in force</p> <p>Paragraphs 1(a),2,3 and 4 - expired</p> <p>Since the last reporting period paragraphs 1(a), 2, 3 and 4 have been expired</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			<p>appeal, when the delay is related to coronavirus-related disruption. The relaxation will continue to benefit individuals whilst there is coronavirus-related disruption.</p> <p>Supplementary information provided – see section 7.1.7 for further information.</p>	
First Scottish Act	Section 8 and schedule 7, paragraphs 6 and 7 -Irritancy clauses in commercial leases: non-payment of rent or other sums due	The provision allows for the statutory period for non-eviction of commercial tenants for non-payment of rent to be extended from 14 days to 14 weeks.	<p>In operation</p> <p>The measure came into force 7 April 2020 and as such, the first date an eviction could take place was 14 July 2020.</p> <p>These provisions are to give the parties to a commercial lease sufficient time to come to an agreement as to any restructuring of the lease in the light of the effect of coronavirus. On 19 June 2020, the Ministry of Housing, Communities and Local Government (MHCLG) issued a UK-wide Code of Practice which provides guidance on a</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			<p>voluntary basis as to relationships between landlords and tenants. Since this date, the anti-irritancy provision has worked in conjunction with the UK-wide Code of Practice with positive feedback from many stakeholders.</p> <p>Landlords can still evict tenants for non-payment of rent in Scotland after the requisite 14 week period which is considered to be a more balanced approach than that adopted in England and Wales where the moratorium on forfeiture procedures is absolute. This has recently (16 September 2020) been extended to 31 December 2020.</p>	
First Scottish Act	Section 8 and schedule 7, paragraphs 8 to 10 - Duration of planning permission	The provision 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.	<p>In operation</p> <p>Given the aim of reducing undue burdens, it would be disproportionate to request authorities or applicants to report on the individual uses of these powers. Although construction sites are</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			permitted to reopen, that has happened recently and it may take some time to become fully operational, including dealing with any backlog of developments. The Scottish Government will continue to liaise with stakeholders as part of the ongoing review of the operation and continued necessity of these provisions.	
First Scottish Act	Section 8 and schedule 7, paragraphs 11 to 19 – Land Registration	The provisions enable the digital submission of applications to the property registers and extend the period of protection provided by advance notices.	In operation The portal for the submission of digital applications is operating successfully. The Keeper of the Registers of Scotland will continue to update Parliament on its operation via the Economy Energy and Fair Work Committee. The Keeper has agreed to consult with the Law Society of Scotland prior to declaring the property registers fully reopen, which in turn will end the extended protection for advance notices.	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
First Scottish Act	Section 8 and schedule 7, paragraphs 20 to 22 - Anatomy Act	The provision extends the three year statutory time limit under the Anatomy Act 1984 for the retention of bodies after anatomical examination has concluded to that of the life of the emergency legislation. This ensures that during this pandemic, licence holders are not committing an offence by retaining a body beyond the statutory three years.	In operation Where bodies can be disposed of within the three year period, then they should. If however for reasons of excess demand on crematoriums or lockdown complications for example, as a result of coronavirus, then bodies can be retained within the extension period until the opportunity arises at crematoriums for their safe disposal.	Commenced and still in force No change to status since last reporting period
First Scottish Act	Section 8 and schedule 7, paragraphs 23 to 30 - Scrutiny of subordinate legislation in urgent cases	Paragraphs 23 to 30 of schedule 7 allow subordinate legislation which is subject to the affirmative procedure to be instead made under a made affirmative procedure where necessary by reason of urgency.	Not in operation The provisions have not required to be used in the reporting period. The provisions are appropriate and proportionate in the current circumstances to provide the Scottish Government and Parliament with the flexibility needed for any unexpected change in circumstances that may still arise due to the pandemic. The provisions	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			would only be exercised when necessary.	
First Scottish Act	Section 8 and schedule 7, paragraph 31 – Business Improvement Districts	The provision extends the duration of Business Improvement Districts (BIDs) that are due to end in the coming months or have recently ended, without the legal requirement to hold a ballot.	In operation	Commenced and still in force No change to status since last reporting period
First Scottish Act	Section 8 and schedule 7, paragraphs 32 and 33 - Muirburn	The provisions ended the current Muirburn (management of moorland by burning and cutting) season early and they suspend Muirburn for the period in which the provisions are in force. In ordinary circumstances, Muirburn season runs from 1 October to 15 April inclusive in Scotland.	In operation The provisions were in operation during this reporting period. The Coronavirus (Scotland) Act 2020 (Suspension: Muirburn) Regulations 2020 were laid in Parliament on 28 August 2020, and are due to come into force on 1 October 2020. The regulations, when in force, suspend section 8 and schedule 7, paragraphs 32 and 33.	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
Second Scottish Act	Section 2, schedule 1, Part 1 - Student residential tenancy: termination by tenant	See section 7.2.1	In operation Supplementary information provided – see section 7.2.1 for further information	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 2, schedule 1, Part 2 - Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears	See section 7.2.2	In operation Supplementary information provided – see section 7.2.2 for further information	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 2, schedule 1, Part 3- Coronavirus Carer's Allowance Supplement	Paragraph 6 amends section 81 of the Social Security (Scotland) Act 2018. This has the effect of adding an additional £230.10 to awards of Carer's Allowance Supplement for the period	In operation While this is a one off payment made to the majority of recipients in June 2020, some backdated payments will be made in December 2020, and potentially future dates, to	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		from 1 April 2020 to 30 September 2020.	people with backdated claims of Carer's Allowance, which is the qualifying benefit for the Coronavirus Supplement. The provisions therefore continue to be necessary and the expiry date has been extended to 31 March 2021 as part of the extension regulations, to allow for payments on backdated claims.	
Second Scottish Act	Section 2, schedule 1, Part 4 - Social Care Staff Support Fund	Paragraph 7 makes provision to require the Scottish Ministers to establish a Social Care Staff Support Fund as soon as is practicable when the second Scottish Act came into force. Paragraph 7(2) sets out what the fund is to be used for. The Scottish Ministers must use the fund to provide financial assistance to workers in the social care sector who have a restricted	In operation The Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 ¹⁹ (SSI 2020/188) commenced on 24 June 2020. These regulations were made in exercise of the powers conferred by sections 2 and 7, and paragraph 7(3) of schedule 1, of the second Scottish Act.	Commenced and still in force No change to status since last reporting period

¹⁹ The Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/188/made>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		<p>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 while the second Scottish Act is in force. Paragraphs 7(3) to 7(7) require the Scottish Ministers to make further provision by regulations about the establishment, maintenance and administration of the fund.</p>	<p>The Scottish Government has commissioned feedback from social care provider representative organisations which will provide an indication of how many social care workers have been supported by this provision. This information will be available for inclusion in the fourth two-monthly report to Parliament which will be due after the reporting period ends on 30 November 2020.</p> <p>The Scottish Government is currently working with Integration Joint Board Chief Finance Officers to develop better financial reporting information around support provided to social care providers. This includes use of the Social Care Staff Support Fund. It should be noted that due to the cross-over between financial support provided, there are limitations to the level of detail that can be provided. However, the sustainability payment principles</p>	

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			agreed with COSLA ensure that it is simpler for social care providers to access appropriate funding and reduces the risk of duplication of support.	
Second Scottish Act	Section 2, schedule 1, Part 5 – Bankruptcy	The provisions protect those in unsustainable debt by making bankruptcy more accessible, they provide that: the Minimal Asset Process (MAP) fee is reduced to £50; no fee will be payable in MAP cases for those receiving certain benefits, including when those benefits are not the applicant's sole income; the maximum debt level for MAP is increased to £25,000, and student loan debt is removed from that calculation; the Full Administration fee is reduced to £150; no fee will be payable in Full Administration cases for those receiving certain	In operation In the period between 27 May and 31 August, there were 612 new applications for bankruptcy which benefitted from the reduced application fee – 474 of which paid no application fee at all.	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		benefits, including when those benefits are not the applicant's sole income; and the minimum debt level for creditor petitions is increased to £10,000. All bankruptcy-related forms and circulars may be sent electronically.		
Second Scottish Act	Section 2, schedule 1, Part 6 – Mental health: named person nomination	<p>The second Scottish 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.</p> <p>This change applies to section 250(2A) of the Mental Health (Care and Treatment)(Scotland) Act 2003 and only affects the process for the proposed named person (nominee). There are no changes to the</p>	<p>In operation</p> <p>The purpose of a named person is one of safeguarding which not only allows for the patient to be represented, it also helps the patient exercise their rights. This temporary amendment was introduced in order to reduce delays in securing the validity of named persons nominations and therefore reduces any disruption for the Mental Health Tribunal Scotland (MHTS) which is responsible for determining whether a person should be detained. All patient safeguards have remained as there are no changes to the process for the patient.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		process for the patient (nominator).		
Second Scottish Act	Section 2, schedule 1, Part 7 – Care Homes	See section 7.2.3	Not in operation Supplementary information provided – see section 7.2.3 for further information	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 2, schedule 1, Part 8 - Powers to purchase care home services and care at home providers	See section 7.2.4	Not in operation Supplementary information provided – see section 7.2.4 for further information	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 2, schedule 1, Part 9 - Care homes: further provisions	See section 7.2.5	In operation Supplementary information provided – see section 7.2.5 for further information	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
Second Scottish Act	Section 2, schedule 1, Part 10 – Marriage and civil partnership	See section 7.2.6	In operation Supplementary information provided – see section 7.2.6 for further information	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 3, schedule 2, Part 1 – Criminal justice - Criminal proceedings: extension of time limits	Paragraph 1 of schedule 2 makes provision to extend certain statutory time limits contained in the Criminal Procedure (Scotland) Act 1995 relating to criminal proceedings.	In operation Delays in progressing criminal cases as a result of the impact of coronavirus on the court system (in particular, jury trials) continued to remain a significant issue in this period and this provision ensured that there did not need to be a large number of individual hearings to extend time limits on a case-by-case basis, placing further pressure on the courts at a time when their capacity is limited.	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 3, schedule 2 and Part 1 Criminal justice - Arrangements	The provisions under paragraph 2 of schedule 2 allow Scottish Ministers to make arrangements for the transfer and custody of prisoners in police stations in	In operation	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	for the custody of persons detained at police stations	connection with appearances before the court by electronic means, and administrative functions connected with such appearances, to be performed by Prisoner Custody Officers.		
Second Scottish Act	Section 3, schedule 2, Part 1 Criminal justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016	Paragraph 6 of schedule 2 makes provision which enables the court to prevent the expiry of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 by changing the time at which the person who gave it is to appear at court when certain conditions are met.	<p>In operation</p> <p>This provision provides the court with the power to prevent the expiry of an undertaking and any conditions attached to it by changing the time the person is due to appear at court.</p> <p>By preventing the expiry of undertakings in this way, the measure has allowed COPFS to review the previously extended undertaking timescales, so dates may revert back to within 28 days of liberation, and 14 days for domestic abuse cases.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			<p>This provision remains a key measure to preserve public and victim safety during the coronavirus outbreak.</p> <p>Data on incidents of domestic abuse for April-July 2020 highlights the continued importance of the provisions in order to preserve victim safety, particularly in sensitive cases of domestic abuse while self-isolation guidance for people infected with, or living with people infected with coronavirus remains in place.</p>	
Second Scottish Act	Section 3, schedule 2, Part 1 - Criminal justice – Fixed Penalty Notices under the Health Protection (Coronavirus) (Restrictions)	See section 7.2.7	<p>In operation</p> <p>Supplementary information provided – see section 7.2.7 for further information</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	(Scotland) Regulations 2020			
Second Scottish Act	Section 3, schedule 2, Part 2 – Proceeds of Crime	<p>Paragraph 8 inserts a new subsection (4A) in section 99 (confiscation orders: postponement) of the Proceeds of Crime Act 2002 ('the 2002 Act'). Subsection (4A) specifies that, for the purposes of section 99(4) of the 2002 Act, "exceptional circumstances" includes the effect (whether direct or indirect) of coronavirus on the proceedings.</p> <p>Paragraph 9 inserts section 116A to the 2002 Act and makes provision for an accused to make application to the court for a further extension of the time to pay a confiscation order where the court accepts that an accused's inability to pay has</p>	<p>In operation</p> <p>The disruption to usual court business is expected to continue and these provisions will help to ensure that the confiscation process is not frustrated due to these delays. The provisions also ensure that individuals are not treated unfairly or disproportionately throughout this period if they have been unable to pay a confiscation order for reasons related to coronavirus.</p>	<p>Commenced and in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		been affected (whether directly or indirectly) as a result of coronavirus, and dis-applies the payment of interest on the outstanding amount as set out at section 117 of the 2002 Act.		
Second Scottish Act	Section 3, schedule 2, Part 3 – Intimation, etc. of documents	Where there is provision requiring or permitting a document to be displayed on the walls (or any other part) of a court building, or to be made publicly available within a court, that is instead to be done by publication of the document on the Scottish Courts and Tribunals Service (SCTS) website. Paragraph 1A (2) and 1A(3) provides direction making powers for the Lord President - providing latitude for the courts to adjust the operation of the new rule as necessary. This could allow, for example, redaction of	<p>In operation</p> <p>The disruption to usual court access by members of the public is expected to continue and these provisions help to ensure that documents can continue to be made publically available, as required or permitted by statute. There are no alternatives which would prevent users of the justice system from adhering to rules for physical distancing and minimising contact.</p> <p>Reverting to placing documents on the walls of court as a means of public display would be irreconcilable with rules for physical distancing and minimising contact.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		sensitive information to account for any issues arising from the potential publication of sensitive data on the SCTS website.		
Second Scottish Act	Section 4, schedule 3, Part 1 – Reports, etc. under the Climate Change (Scotland) Act 2009	Paragraph 1 of schedule 3 amends the Climate Change (Scotland) Act 2009 in relation to the dates by which; i) a Citizens Assembly on climate change is required to have completed its deliberations and reported to the Scottish Ministers and Scottish Parliament (such that if the Assembly is unable, for a reason relating to coronavirus, to report by 28 February 2021 then it must do so as soon as reasonably practicable after that date), and ii) the Scottish Ministers are required to have established – via regulations - a national Nitrogen Balance Sheet (the	In operation Preparations for Scotland’s Climate Assembly are ongoing. Ministers will provide further updates to the Scottish Parliament on arrangements for the Assembly before the time of its first meeting. The provision to allow for a delay to the deliberations and reporting of the Assembly beyond February 2021, should this be necessary for reasons related to coronavirus, will apply to all persons irrespective of protected characteristics. As such, there may be positive equalities benefits for some groups as delay could allow the participation of individuals that might otherwise be excluded due to coronavirus restrictions. A report outlining the	Section 4 and schedule 3, Part 1 Paragraph 1 – expired Since the last reporting period, paragraph 1 has been expired

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		<p>deadline is changed to 24 months after the relevant section of the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 came into force, which in practice means by 23 March 2022).</p>	<p>arrangements for Scotland's Climate Assembly was laid in the Scottish Parliament on 8 September 2020²⁰.</p> <p>Work within the Scottish Government on a project to establish a national Nitrogen Balance Sheet has begun, but it is not yet possible to set out an exact date by which it expects the process of regulating to establish a Balance Sheet to have concluded. A formal screening exercise for an Equality Impact Assessment will be undertaken in due course.</p> <p>The provisions were in operation during the reporting period and paragraph 1 was expired on 29 September 2020. These are 'spent' provisions, which upon commencement immediately and permanently amended the Climate</p>	

²⁰ Scotland's Climate Assembly: operations and administration arrangements - <https://www.gov.scot/publications/scotlands-climate-assembly-operations-administration-arrangements/pages/10/>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			Change (Scotland) Act 2009 to amend the deadlines associated with a Citizens Assembly and a national Nitrogen Balance Sheet.	
Second Scottish Act	Section 4, schedule 3, Part 2 – Accounts of registered social landlords	Paragraph 2 of schedule 3 amends section 70 of the Housing (Scotland) Act 2010. It dis-applies the duty, in respect of the financial year ending 31 March 2020, for Registered Social Landlords to submit audited annual accounts to the Scottish Housing Regulator within six months of the end of the period to which they relate. Instead, they must be provided within nine months of the end of the period to which they relate.	<p>In operation</p> <p>The provisions were in operation during the reporting period and paragraph 2 was expired on 29 September 2020.</p> <p>This is a ‘spent’ provision which made a permanent amendment to other legislation. Part 2 of schedule 3 amends section 70 of the Housing (Scotland) Act 2010 (the ‘2010 Act’). Expiring Section 4, schedule 3, Part 2 of the second Scottish Act retains the amendments to section 70 of the 2010 Act.</p>	<p>Section 4 and schedule 3, Part 2</p> <p>Paragraph 2 - expired</p> <p>Since the last reporting period, paragraph 2 has been expired</p>
Second Scottish Act	Section 4, schedule 3, Part 3 – Accounts under the	This provision makes an amendment to the first Scottish Act to reflect the periods most likely to be affected by the coronavirus	<p>In operation</p> <p>The provisions were in operation during the reporting period and</p>	<p>Section 4, schedule 3, Part 3</p> <p>Paragraph 3 - expired</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	Public Finance and Accountability (Scotland) Act 2000	<p>outbreak (i.e. financial years 2019/20 and 2020/2021), as part of the response to the accounting timetable disruption caused by the outbreak.</p> <p>The provision allows by further regulation amendments to paragraph 15(1) of schedule 6 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.</p>	<p>paragraph 3 was expired on 29 September 2020.</p> <p>This is a 'spent' provision which made a permanent amendment to section 7 and schedule 6, Part 5 of the 'duties under the Public Finance and Accountability (Scotland) Act 2000' provisions of the first Scottish Act. Expiring this provision retains the amendments to the first Scottish Act.</p>	<p>Since the last reporting period paragraph 3 has been expired</p>
Second Scottish Act	Section 4, schedule 3, Part 4 - Housing (Scotland) Act 1987: statement under section 33B	Paragraph 4 of schedule 3 amended section 33B(1) of the Housing (Scotland) Act 1987 ('the 1987 Act') to extend, by six months, the deadline for the Scottish Ministers to publish a statement on the circumstances and criteria	<p>In operation</p> <p>The provisions were in operation during the reporting period and paragraph 4 was expired on 29 September 2020.</p> <p>This is a 'spent' provision which permanently amended section 33B</p>	<p>Section 4 and schedule 3, Part 4</p> <p>Paragraph 4- expired</p> <p>Since the last reporting period paragraph 4 has been expired</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		<p>for exercising their power, in section 33A of the 1987 Act to modify referrals between Scottish Local Authorities on the grounds of local connection. The deadline is now 18 months (by 7 May 2021) rather than 12 months after the coming into force of section 33B(1) (on 7 November 2019.) The provision also gives the Scottish Ministers the power to make regulations to further extend the period by up to an additional six months (by 7 November 2021), on a one-off basis, should this be necessary.</p>	<p>of the Housing (Scotland) Act 1987 to extend the period for Scottish Ministers to publish a statement on exercising the power to modify local connection.</p> <p>The regulation making powers have not been used since the provisions came into force.</p>	
Second Scottish Act	Section 5, schedule 4, Part 1 - UEFA European Championship	Part 1 of schedule 4 modifies the UEFA European Championship (Scotland) Act 2020.	<p>In operation</p> <p>The provisions were in operation during the reporting period and paragraph 1 was expired on 29 September 2020.</p>	<p>Section 5 and schedule 4, Part 1</p> <p>Paragraph 1 - expired</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			<p>This is a 'spent' provision. This provision made permanent amendments to the UEFA European Championship (Scotland) Act 2020 ('the 2020 Act'). The provisions of the 2020 Act, as amended by this provision, will continue to be required beyond 29 September 2020, but will remain in force after that date, or the later date of repeal of the second Scottish Act, by virtue of section 15(2)(d) of the Interpretation and Legislative Reform (Scotland) Act 2010.</p>	<p>Since the last reporting period paragraph 1 has been expired</p>
Second Scottish Act	Section 5, schedule 4, Part 2 - Listed buildings and conservation areas: consents	Paragraph 2 amends section 16 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the '1997 Act') to extend the duration of a listed building consent or a conservation area consent that would otherwise lapse during the	<p>In operation</p> <p>The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/254)²¹ are due to come into force on 5 October 2020. When in force, these regulations will extend the duration</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

²¹ The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/254/contents/made>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		<p>emergency period because works authorised by the consent have not begun. The emergency period is the period beginning with the coming into force of these provisions and ending on 6 October 2020. The changes made to section 16 apply to conservation area consent by virtue of section 66(3) of the 1997 Act. Consents to which the provision applies will instead lapse at the end of an extended period (which ends on 6 April 2021) unless works have commenced before the end of the extended period. It enables the Scottish Ministers to make regulations to amend the definition of the emergency and extended periods.</p>	<p>of the provisions, with the “emergency period” to expire on 31 March 2021 and the “extended period” expiring on 30 September 2021.</p>	

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
Second Scottish Act	Section 5, schedule 4, Part 3 - Registers kept by the Keeper of the Registers of Scotland	Paragraph 3 makes provision for registration or recording in the Register of Inhibitions to proceed on the basis of electronic submission of documents and copies of documents to the Keeper of the Registers. Paragraph 4 makes provision for registration in the Register of Judgments and the issuing of documents to proceed on the basis of electronic submission to and by the Keeper of the Registers of documents and copies of documents.	In operation The portal for the submission of digital applications providing access to the Register of Inhibitions and Register of Judgments is operating successfully. The Keeper of the Registers of Scotland will continue to update Parliament on its operation via the Economy, Energy and Fair Work Committee.	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 5, schedule 4, Part 4 - Care services: giving of notices by the	See section 7.2.8	In operation Supplementary information provided – see section 7.2.8 for further information.	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	Care Inspectorate			
Second Scottish Act	Section 5, schedule 4, Part 5 - Land and Buildings Transaction Tax: additional amount	The second Scottish Act extends to 36 months, for certain transactions, the period within which a previous main residence can be sold and a repayment of the Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) claimed. It provides a power for the Scottish Ministers to amend, by order, the period of 36 months or the period of transactions to which the Act applies, where the Scottish Ministers are satisfied that this is appropriate for a reason related to coronavirus.	<p>In operation</p> <p>The provisions were in operation during the reporting period and paragraph 6 was expired on 29 September 2020.</p> <p>These are 'spent' provisions. The provisions permanently amended schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013 (the 'LBTT Act'). Expiry of these provisions will not affect this permanent amendment, including with regard to the delegated powers provided.</p>	<p>Section 5 and schedule 4, Part 5</p> <p>Paragraph 6 - expired</p> <p>Since the last reporting period paragraph 6 has been expired</p>
Second Scottish Act	Section 5, schedule 4, Part 6 – Non-	Paragraph 7 amends section 153 of the Local Government etc. (Scotland) Act 1994 to allow the Scottish Ministers,	<p>In operation</p> <p>The provisions were in operation during the reporting period and</p>	Section 5 and schedule 4, Part 6

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	Domestic Rates relief	during the financial year 2020/21, to make regulations prescribing rules that reduce or remit the amount payable as non-domestic rate. Those rules may reduce or remit the amount either for the whole of that year (including the period prior to the regulations being made), or for such period within that year as is specified in the regulations (including a period beginning prior to the regulations being made). Paragraph 8 provides that no Non-Domestic Rates are payable in respect of premises used wholly or mainly for production of newspapers and related news platforms. This relief applies on a daily basis, from the day after Royal Assent to	<p>paragraphs 7 and 8 were expired on 29 September 2020.</p> <p>These are 'spent' provisions. Paragraph 7 amends section 153 of the Local Government etc. (Scotland) Act 1994 (power to prescribe amount of non-domestic rate) to enable Ministers to make regulations in respect of financial year 2020-21 to reduce or remit Non-Domestic Rates liabilities. Paragraph 8 amends schedule 1 of the Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 (SSI 2020/101)²² to provide an additional class of businesses to be given relief under those regulations, being those in the news publishing industry.</p>	<p>Paragraphs 7 and 8 - expired</p> <p>Since the last reporting period paragraphs 7 and 8 have been expired</p>

²² The Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/101/contents/made>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		the Act. The regulations that are amended provide for such relief to continue until and including 31 March 2021.		
Second Scottish Act	Section 5, schedule 4, Part 7 - Execution of documents, etc.	Paragraph 9 of schedule 4 removes the requirement for the physical presence of Scottish notaries public, solicitors and advocates in specific circumstances where an oath, affirmation or declaration is made, or where a document is executed, thus allowing for other methods for the duration of the operation of the second Scottish Act.	In operation Personal attendance to execute documents and administer oaths in person etc. remains difficult as a result of physical distancing, and these provisions require to remain in place.	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 5, schedule 4, Part 8 – Freedom of information	Paragraph 12 requires the Scottish Ministers to lay reports before Parliament every two months on their responses to Freedom of	In operation Paragraph 12 is in operation and the Scottish Ministers laid their first report to Parliament ²³ on 7 August –	Commenced and still in force

²³Coronavirus (Scotland) (No.2) Act 2020: report on the Scottish Ministers' responses to requests for information under the Freedom of Information (Scotland) Act 2002 - <https://www.gov.scot/publications/coronavirus-scotland-no-2-act-2020-report-scottish-ministers-responses-requests-information-under-freedom-information-scotland-act-2002/>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		Information (FOI) requests during the period that Part 2 of schedule 6 of the first Scottish Act is in force. Paragraph 12(2) sets out the information to be included in each report.	covering the period 27 May to 26 July. It is anticipated the second report will be laid in Parliament in October.	No change to status since last reporting period
Second Scottish Act	Section 5, schedule 4, Part 9 - Low emission zones	Paragraph 13 places a requirement on the Scottish Ministers to lay a report before the Scottish Parliament by 4 December 2020 on progress towards establishing low emission zones under Part 2 of the Transport (Scotland) Act 2019.	In operation	Commenced and still in force No change to status since last reporting period
Second Scottish Act	Section 5, schedule 4, Part 10 - Council Tax: exempt dwellings	Paragraph 14 creates an exemption from paying Council Tax for those properties that were occupied by one of the groups of individuals listed at paragraphs 10 and 12 of schedule 1 of the Council Tax (Exempt Dwellings)	In operation There is no central data collected on the extent of use of this provision, and there are no plans to collate information of this nature. The provision is proportionate and the status at this time of commenced and still in force is appropriate.	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		(Scotland) Order 1997, and which are unoccupied on or after 17 March 2020 for a reason relating to coronavirus. This exemption applies until the property is occupied or the second Scottish Act ceases to be in force.		
Second Scottish Act	Section 5, schedule 4, Part 11 - Traffic Regulation	Paragraph 15 of schedule 4 has the effect of extending the maximum duration of Temporary Traffic Regulation Orders (TTROs) made under section 14 of the Road Traffic Act 1984 (the '1984 Act') which can restrict or prohibit the use of certain types of roads, from 6 months to 18 months. Those roads are existing footpath, bridleway, cycle track or byway open to all vehicles. The maximum duration of TTROs on all other roads is unchanged and remains 18	In operation It would be disproportionate to request traffic authorities to report on the individual uses of this power and therefore information on the extent of use of the provision is not held at this time. The traffic authorities this provision will be most relevant to are Local Authorities who are at the core of the coronavirus response and many of their services are under significant pressure. Local Authorities continue to indicate that they need flexibility in their options for regulating the use of the various types of roads in their areas due to	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		months (see section 15(1)(b) of the 1984 Act). It also substitutes a reference to the 6 month time limit with a reference to 18 months in section 15(3) of the 1984 Act which deals with the power of the national authority (the Scottish Ministers) to direct that a TTRO may continue in force for a further period.	the ongoing need for physical distancing and increased active travel. For this reason, the status of the provision in this reporting period is appropriate.	
Second Scottish Act	Section 5, schedule 4, Part 12 - Restriction on giving grant to businesses connected to tax havens	Schedule 4, Part 12 introduces new conditions in relation to tax havens that must be met before the Scottish Ministers, or any public body administering grants on their behalf, may make a coronavirus-related grant to a company. The Scottish Ministers are required to take steps to satisfy themselves that the conditions are met. A coronavirus-related grant may not be made if the	<p>In operation</p> <p>‘Key principles’ guidance has been developed for stakeholders and early scoping conversations have been held to support implementation.</p> <p>The Scottish Government has carried out work with stakeholders to understand implementation needs and detailed guidance is being developed for publication in due course.</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		<p>conditions are not met and if, after a grant has been made, it is established that the conditions were not in fact met, the grant will be immediately repayable by the grantee. The conditions that must be met are that the grantee company must not be based in a tax haven, the subsidiary of a company based in a tax haven, the parent company of a subsidiary based in a tax haven nor party to an arrangement under which any of its profits are subject to the tax regime of a tax haven.</p>		
UK Act	Section 2 - Emergency registration of nurses and other healthcare professionals	Section 2 introduces schedule 1 which modifies the Nursing and Midwifery Order 2001, and the Health Professions Order 2001, to permit the independent statutory regulators, the	In operation	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		Nursing and Midwifery Council (NMC) and the Health and Care Professions Council (HCPC) to add people they consider to be “fit and proper and suitably experienced” to an emergency temporary professional register for the duration of a public health emergency as declared by the Secretary of State.		
UK Act	Section 4 and schedule 3 – Emergency arrangements concerning medical practitioners: Scotland	Section 4 introduces schedule 3 which makes temporary modifications to the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 and creates a limited exception to the requirement that NHS GPs must be accepted on a register with their local Health Board (called a “performers list”) before beginning to practice in any	In operation The use of the powers is largely an administrative process and it is for Health Boards to decide whether GPs can perform whilst their application is pending. As such there is no central oversight of the extent of the use of the powers in the reporting period. The provisions continue to be required due to the continuous risk that Health Boards will be subject to staff shortages which could delay the standard	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		GP surgery which provides NHS care in that Health Board's area.	processes around the performers list. Powers to further modify the application process by regulations have not been used.	
UK Act	Section 7 and schedule 6 - Temporary registration of social workers: Scotland	The provision increases the available social work workforce during the pandemic by inviting those on a career break, recently retired and final year students to join the register and return to/join frontline services.	<p>In operation</p> <p>A direction was made by Scottish Ministers on 30 March 2020 (under section 46C(1) of the Regulation of Care (Scotland) Act 2001) - directing the Scottish Social Services Council to consider applications for registration as a temporary social worker in accordance with section 46D of the Regulation of Care (Scotland) Act 2001.</p> <p>The temporary social work register has been established and over 290 registrants are available to be deployed to frontline services. Details have been shared with Local Authorities in order that they can access registrants should they need to recruit additional social workers.</p>	<p>Commenced and still in force</p> <p>No change in status since the last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			An increase in demand for all social work services as we ease out of lockdown is expected and therefore the temporary social work register continues to be necessary.	
UK Act	Section 10 and schedule 9 - Temporary modification of mental health legislation	See section 7.3.1	Not in operation Supplementary information provided – see section 7.3.1 for further information	Not yet commenced No change to status since last reporting period
UK Act	Section 12 - Indemnity for health services activity: Scotland	The provision grants Scottish Ministers the discretionary power to make indemnity arrangements for any person who is working within the NHS in Scotland, where the indemnity relates to coronavirus.	Not in operation Scottish Ministers issued a direction ²⁴ on 7 April 2020 under existing powers (the NHS (Scotland) Act 1978) to Health Boards to indemnify staff engaged in the coronavirus response. As directions were made under existing powers in the first reporting period, the provisions around indemnity arrangements under section 12 of the UK Act have not had to be used	Commenced and still in force No change to status since last reporting period

²⁴ Scottish Ministers indemnity cover direction - <https://www.sehd.scot.nhs.uk/publications/DC20200407negligence.pdf>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			by Health Boards in this reporting period.	
UK Act	Section 16 - Duty of Local Authority to assess needs: Scotland, and section 17 – section 16: further provision	See section 7.3.2	Supplementary information provided – see section 7.3.2 for further information	Commenced and still in force No change to status since last reporting period
UK Act	Section 18 and schedule 13 - Registration of deaths and still-births etc.	Section 18 introduces schedule 13 which contains temporary modifications relating to the registration of deaths and still-births across the UK. Part 2 of schedule 13 relates to Scotland.	In operation The provisions have continued to operate successfully in this reporting period, facilitating remote registration of deaths and still-births to the same standard of accuracy as in-person registration but without unnecessary exposure to coronavirus, and given the efficiency of the process, to enable Local Authorities to better address other registration priorities	Commenced and still in force No change to status since last reporting period
UK Act	Section 20 and schedule 14 –	Provisions under Part 1 enable Scottish Ministers to	Part 1 – not in operation. Use of the power that was in operation for part	Commenced and still in force

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	Review of Medical Certificate of Cause of Death and cremation: Scotland	<p>suspend the review of randomly selected Medical Certificates of Cause of Death by the Death Certification Review Service (DCRS) and pause interested persons reviews under the Certification of Death (Scotland) Act 2011.</p> <p>Provisions under Part 2 give Scottish Ministers the power to dis-apply the offence under section 49 of the Burial and Cremation (Scotland) Act 2016, insofar as it relates to the signing of an application for cremation. It also enables Scottish Ministers to suspend</p>	<p>of the first reporting period was revoked by direction²⁵ on 11 May 2020. Although the power has not been used in the reporting period, the provision is judged to continue to be necessary in order to ensure that the option to suspend again is available, should this be required.</p> <p>Part 2 – in operation. In the first reporting period, Scottish Ministers made two determinations²⁶ (on 8 April 2020) which suspended certain provisions within the Burial and Cremation (Scotland) Act 2016 and the Cremation (Scotland) Regulations 2019. There have been no changes from the position in the first or second reporting period.</p>	No change to status since last reporting period

²⁵Direction under paragraph 2(4) of schedule 14 (Review of medical certificates of cause of death and cremations: Scotland) of the Coronavirus Act 2020 (C.7) - <https://www.gov.scot/publications/coronavirus-act-2020-c-7-direction-under-paragraph-24-of-schedule-14/>

²⁶ Coronavirus Act 2020 (C.7): determination under paragraph 8(1) of Schedule 14 (Cremations) - <https://www.gov.scot/publications/coronavirus-act-2020-c-7-direction-under-paragraph-81-of-schedule-14/>

Coronavirus Act 2020 (C.7): determination under paragraph 9(1) of part 2 of Schedule 14 (Cremations) - <https://www.gov.scot/publications/coronavirus-act-2020-c-7-direction-under-paragraph-91-of-part-2-of-schedule-14/>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		sections 53-55 of the Burial and Cremation (Scotland) Act 2016 and relevant associated provisions of the Cremation (Scotland) Regulations 2019.		
UK Act	Section 22 - Appointment of temporary Judicial Commissioners	The provision relates to the appointment of Judicial Commissioners under the Investigatory Powers Act 2016. Judicial Commissioners are appointed by the Prime Minister, following consultation with Scottish Ministers. The purpose of this provision is to allow the Secretary of State to make regulations allowing the Investigatory Powers Commissioner to appoint temporary commissioners for	<p>In operation</p> <p>The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 (SI 2020/360)²⁷ came into force on 27 March 2020.</p> <p>The provision is in operation and it continued to be necessary in this reporting period.</p> <p>The appointment of Temporary Judicial Commissioners has ensured that warrants needed by intelligence and law enforcement agencies continued to be</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

²⁷ The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 - <http://www.legislation.gov.uk/ukSI/2020/360/made>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
		a 6 month period, renewable to 12 months.	considered. The need for this provision will be kept under review by the independent Investigatory Powers Commissioner.	
UK Act	Section 23 - Time limits in relation to urgent warrants under Investigatory Powers Act	The provision relates to time period for urgent warrants under the Investigatory Powers Act 2016 and gives the Secretary of State the power to make provision by regulations which extend the time periods applying to urgent warrants, should this be necessary given the impact that coronavirus is having, or is likely to have on the capacity of Judicial Commissioners to carry out their functions.	<p>In operation</p> <p>The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 (SI 2020/360) came into force on 27 March 2020²⁸.</p> <p>The provision is in use and has continued to be necessary in this reporting period. The variation to the urgent warrant procedure has ensured that intelligence and law enforcement agencies have the flexibility they need to protect national security and prevent serious crime. The need for this provision will be kept under review</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

²⁸ The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 - <https://www.legislation.gov.uk/uksi/2020/360/made>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			by the independent Investigatory Powers Commissioner.	
UK Act	Sections 25 to 29 and schedule 15- Food supply	These provisions empower Scottish Ministers, by regulation, to require those involved in a food supply chain to provide information to help determine whether there is disruption (or risk thereof) to the supply chain. The provisions also provide enforcement powers and impose restrictions on the use of information.	Not in operation The provisions continue to be required, to hold in reserve, in the event that voluntary provision of information by food supply chain participants breaks down. The voluntary provision of information continues to work well.	Not yet commenced No change to status since last reporting period
UK Act	Sections 34 and 35 - Temporary disapplication of disclosure offences: Scotland and Power to reclassify certain disclosure	See section 7.3.3	Not in operation Supplementary information provided – section 7.3.3 for further information	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	requests: Scotland			
UK Act	Section 36 - Vaccination and immunisation: Scotland	The provisions amend section 40 of the National Health Service (Scotland) Act 1978. The requirement in that section, that vaccinations and immunisations be administered by medical practitioners or persons acting under their direction and control, is removed.	In operation In the first reporting period (on 7 April 2020), Scottish Ministers made directions ²⁹ under section 2(5) of the National Health Service (Scotland) Act 1978, to support vaccination delivery by GP practices where they are affected by coronavirus. The provisions have continued to be in operation in this reporting period.	Commenced and still in force No change to status since last reporting period
UK Act	Section 37 and Part 2 of schedule 16 and section 38 and Part 2 of schedule 17 - temporary closure of educational institutions and	See section 7.3.4	Schedule 16, Part Two – not in operation Schedule 17, Part Two – in operation Supplementary information provided - see section 7.3.4 for further information	Commenced and still in force No change to status since last reporting period

²⁹ Provision of routine vaccinations and immunisations (Coronavirus Outbreak) (Scotland) Directions 2020 - https://www.sehd.scot.nhs.uk/publications/DC20200407Delivery_vaccinations_immunisations_coronavirus.pdf

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	childcare premises, and temporary continuity: education, training and childcare			
UK Act	Section 46 - NHS pension schemes: suspension of restrictions on return to work: Scotland	The provision suspends pension scheme rules which prevent retired NHS staff from returning to work for more than 16 hours per week and require that some staff's pensions are abated upon return to work. It also suspends the requirement that NHS staff reduce their pay by 10% if they elect to 'draw down' their benefits and continue working.	In operation The suspension of pension scheme rules has allowed former NHS staff to return to frontline NHS roles, adding vital capacity to the NHS workforce. The measures allow skilled and experienced staff who have recently retired from the NHS to return to work, and they have also allowed retired staff who have already returned to work to increase their commitments if required, without having their pension benefits suspended.	Commenced and still in force No change to status since last reporting period
UK Act	Section 49 and schedule 19 - Health Protection	See section 7.3.5	In operation	Commenced and still in force

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	Regulations: Scotland		Supplementary information provided – see section 7.3.5 for further information	No change to status since last reporting period
UK Act	Section 51 and Part 3 of schedule 21 - Powers relating to potentially infectious persons	See section 7.3.6	Schedule 21 powers were switched on by way of statutory declaration in March 2020, however the powers have not been used in this reporting period. Supplementary information provided – see section 7.3.6 for further information	Commenced and still in force No change to status since last reporting period
UK Act	Section 52 and Part 3 of schedule 22 - Powers to issue directions relating to events, gatherings and premises	See section 7.3.7	Schedule 22 powers were switched on by way of statutory declaration in March 2020, however the powers have not been used in this reporting period. Supplementary information provided – see section 7.3.7 for further information	Commenced and still in force No change to status since last reporting period
UK Act	Section 58 and schedule 28 – Powers in relation to	Section 58 and schedule 28 contain powers relating to the transportation, storage and disposal of dead bodies	Not in operation Although the powers have not been used in the reporting period, the	Commenced and still in force

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
	transportation, storage and disposal of dead bodies etc.	and other human remains. If advice indicates that the number of people who might die from coronavirus is likely to significantly exceed the capacity to locally or nationally manage the deceased, designated Local Authorities and Scottish Ministers have the ability to take control of a component or components of the death management process.	provision is judged to continue to be necessary in order to ensure that the powers can be used in future if needed and in particular to ensure the ability to respond to particular pressures in a specific Local Authority area should these emerge at any point. While there is potential for resurgence of the virus, the provisions should continue to be available. The Scottish Government has discussed this with the Society of Local Authority Chief Executives (SOLACE) and it has endorsed the Government's approach.	No change to status since last reporting period
UK Act	Sections 69 and 70 - Postponement of elections: Scotland	The provisions enable Returning Officers and the Presiding Officer to respectively postpone local government by-elections and by-elections for constituency seats to the Scottish Parliament.	Section 69 – not in operation The provisions will only be relevant if a vacancy for a Scottish Parliament constituency seat occurs during the period of the provision being in force. Section 70 – in operation	Commenced and still in force No change to status since last reporting period

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			<p>In the third reporting period the provision was used to further postpone three local government by-elections previously postponed using the provision. In total 11 by-elections have been postponed, albeit the provision has been used 15 times.</p>	
UK Act	Section 75 - Financial assistance for industry (disapplication of limit under section 8 of the Industrial Development Act 1982)	This provision provides that financial assistance provided under section 8 of the Industrial Development Act 1982 is not to count towards the limits set out in the subsection of section 8, if the assistance has been given in relation to the coronavirus.	<p>In operation</p> <p>This provision has elements of both reserved and devolved competence. As set out within section 75(3) of the UK Act, there are alternative reporting requirements in place for this provision, however these only relate to designated assistance provided by the Secretary of State, it does not cover assistance provided the Scottish Ministers or Welsh Ministers.</p> <p>As it applies to Scotland, the provision applies to the Energy Transition Fund, however no monies</p>	<p>Commenced and still in force</p> <p>No change to status since last reporting period</p>

Act	Provision	Description of provision	Operation of the provision in reporting period three (ending 30 Sept)	Status at end of reporting period three (30 Sept) and details of any change to status since last reporting period
			were paid in respect of this, in the reporting period.	

7. Supplementary information

7.1 First Scottish Act

7.1.1 Section 2 and schedule 1 - Eviction from dwelling-houses

Description of Provisions

- 7.1.1.1 The provisions originally increased the notice period across all eviction grounds in the private and social rented sector, except the abandonment and vacant property grounds. On 3 October 2020, regulations will come into force which will revert the three month notice period for anti-social behaviour and criminality eviction grounds, back to its prior one month notice period. For the private rented sector, the provisions amend all the eviction grounds a landlord can use to regain possession to make them discretionary.

Operation of Provision in Reporting Period

- 7.1.1.2 Section 2, schedule 1, paragraph 1, sub paragraph 2 makes provision for all private rented sector eviction cases going before the First-tier Tribunal (Housing and Property Chamber) to be considered on a discretionary basis. As of 23 September 2020, the First-tier Tribunal (Housing and Property Chamber) confirmed that it had received four applications that fall within the scope of the emergency provisions.
- 7.1.1.3 Section 2, schedule 1, paragraph 8 provides a power for Scottish Ministers, exercisable by the negative procedure, to modify the length of any period of notice specified to apply during the relevant period. In exercising this power, the Scottish Ministers cannot specify a notice period which is longer than six months. Since the last report to Parliament, a number of Local Authorities and social and private landlords have expressed significant concerns about the impact of anti-social and criminal behaviour on the safety and wellbeing of neighbours and wider communities over recent months. A range of evidence was submitted to support this including case studies from the Scottish Federation of Housing Associations, Glasgow and West of Scotland Forum of Housing Associations and COSLA. Furthermore, the Scottish Association of Landlords (SAL) provided statistics relating to a summary of calls to their helpline during the period 1 April – 31 July 2020, compared to the same period in 2019. This showed an 88% increase in calls from landlords seeking advice on how to deal with anti-social behaviour by tenants. In addition, data from Housemark Scotland shows reports of anti-social behaviour in the social rented sector rose by 17% between May and June 2020, which was around 30% higher than would normally be expected in this period.
- 7.1.1.4 Therefore, in light of the substantial impact such behaviour can have on individuals and communities, Ministers have exercised their powers under section 2 (schedule 1, paragraph 8) to revert the notice period for eviction

grounds relating to anti-social behaviour and criminality across all tenancies back to its original one month notice period. The Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 (SSI 2020/270)³⁰ were laid in Parliament on 4 September 2020 and are anticipated to come into effect on 3 October 2020. These regulations will ensure that where landlords have clear evidence of anti-social or criminal behaviour, that cannot be resolved by other means, then they are able to take the necessary action to end the tenancy. It should be noted that Ministers can exercise their power under section 2 (schedule 1, paragraph 8) at any time during the lifetime of the emergency legislation. Therefore, should significant lockdown restrictions be re-introduced, which would require people to remain in their homes due to resurgence of the virus – Ministers could, subject to approval by the Parliament, reinstate a longer notice period for anti-social and criminal eviction grounds.

- 7.1.1.5 The provisions which extend notice periods to - in effect - halt any eviction action under the existing legislation including the Private Housing (Tenancies) (Scotland) Act 2016 and the Housing (Scotland) Act 2001, for up to six months, have been used in the reporting period. This applies to both the social and private rented housing sectors in order to ensure that the position is absolutely clear for all landlords in Scotland.
- 7.1.1.6 Before the provisions commenced, a tenant with a private residential tenancy could have been asked to leave their home within 28 days of a notice being served by the landlord, if they had been living in the property for six months or less; or if the landlord was using an eviction ground to do with the tenant's behaviour. Where a tenant had lived in a property for six months or more and the eviction ground did not relate to the tenant's behaviour, a landlord was required to give 84 days' notice. With the new provisions, the tenant can stay for up to six months before an application can be made to the Tribunal to repossess a property for all grounds other than the abandonment and vacant property grounds, and now also the anti-social behaviour and criminality grounds.

Factors Considered to Determine Use and Continued Necessity

- 7.1.1.7 In this reporting period, in order to assess the continued necessity of the provisions, the Scottish Government has considered various sources of information. Recent employment statistics show that the unemployment rate in Scotland in the latest period May to July 2020 is up by 0.1 percentage points over the quarter, and up by 0.7 percentage points over the year. In August, Scotland's unemployment claimant count was 225,800, up by 2.1% since July, and more than double the level compared to the previous year. There has also been a substantial increase in Universal Credit claims in recent months, with 470,000 people in Scotland now on Universal Credit as at July 2020, almost double the number in January 2020³¹. Up to the end of

³⁰ The Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/270/made>

³¹ Universal Credit Scotland Dashboard, August 2020 - <https://www.gov.scot/publications/universal-credit-scotland-dashboard-august-2020/>

July 2020, a total of 779,500 employees in Scotland have been furloughed³², with a further 157,000 claims made by self-employed workers³³. As we move towards furlough ending there are significant concerns around the potential for further job losses.

- 7.1.1.8 In addition to this, there is evidence that renting households are less likely than homeowners to have enough savings to cope with a fall in employment income. Office for National Statistics (ONS) analysis of household financial resilience shows that an estimated 28% of renting households in Scotland would be unable to cover a 20% loss of income for one month, rising to 43% if the loss were sustained for three months³⁴. In addition to this, recent findings from a YouGov survey of adults in the UK carried out from 30 July to 2 August 2020 shows that the coronavirus crisis has had a greater impact on employment among people who rent than those who own their own home. Findings include that employees who rent are more likely to be unable to work at all as a result of the pandemic (9% compared with 3% of employed owners), are more likely to have been furloughed (15% compared with 11% of employed owners), and are also more likely to have been made redundant (6% compared with 2% of employed owners)³⁵.
- 7.1.1.9 A survey commissioned by the Joseph Rowntree Foundation in June 2020 showed that in the private rented sector in Scotland, almost half of tenants (45%) had seen a drop in their income since March 2020. Of those, seven in 10 (71%) had cut back on spending, and nearly six in 10 (58%) had to borrow or use up savings, the highest proportion of any tenure. In addition, four in 10 (42%) private renters were worried about their ability to pay rent after lockdown is lifted, and 25% of private tenants had already fallen behind with a payment, most likely gas, electricity and other bills³⁶.
- 7.1.1.10 Monthly coronavirus information published by the Scottish Housing Regulator³⁷ shows that the total value of rent arrears in the social sector at the end of April 2020 was £150 million, following which it increased by £8.2 million (5.5%) during the month of May 2020, by £3.7 million (2.3%) during June 2020, and by a further £1.5 million in July, bringing total social sector rent arrears to stand at £163.3m as at the end of July 2020. During June 2020, there were a total of 245 notices of proceedings for recovery of

³² Coronavirus Job Retention Scheme statistics: August 2020 -

<https://www.gov.uk/government/statistics/coronavirus-job-retention-scheme-statistics-august-2020>

³³ Self-Employment Income Support Scheme statistics: July 2020 -

<https://www.gov.uk/government/statistics/self-employment-income-support-scheme-statistics-august-2020>

³⁴ Office for National Statistics Coronavirus (COVID-19) roundup -

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/coronaviruscovid19roundup/2020-03-26#lossofincome>

³⁵ YouGov survey - <https://yougov.co.uk/topics/economy/articles-reports/2020/09/04/third-renters-worry-about-affording-food>

³⁶ Joseph Rowntree Foundation survey of Scottish households - <https://www.jrf.org.uk/press/almost-third-scots%E2%80%99-incomes-have-reduced-lockdown-half-affected-renters-worried-about-paying>

³⁷ Scottish Housing Regulator monthly Covid-19 dashboards -

<https://www.housingregulator.gov.scot/landlord-performance/national-reports/monthly-covid-19-dashboards>

possession issued by social landlords to tenants for rent arrears, increasing to 376 in July, and a total of 30 court actions for eviction were initiated in June, increasing to 89 in July, levels which are significantly lower when compared to average monthly figures for previous years.

- 7.1.1.11 Evidence on the scale of rent arrears and repossession proceedings in the private rented sector in Scotland is as yet relatively limited, with some mixed findings being reported so far, although this may become clearer as further evidence is gathered and reported on, including by the First-tier Tribunal (Housing and Property Chamber). In terms of rent arrears, research findings by the Joseph Rowntree Foundation³⁸ found that, as at June 2020, there was not any sharp increase in rent arrears for private renters identified, with fewer than one in ten private tenants in Scotland estimated to be in arrears as at June 2020. However, a separate analysis carried out by PayProp, based on the data that it holds from the processing of rent payments from tenants in Scotland, shows that the percentage of tenants in arrears, based on the sample of tenants paying rent across the January to May 2020 period, had increased from 8% in March, up to 13% in April, and then 14% in May³⁹.
- 7.1.1.12 A recent survey of private landlords and agents by the Scottish Association of Landlords, carried out at the start of August 2020, found that many members had provided financial assistance to their tenants during the pandemic. Results showed that 44% of landlord and agent survey respondents had given a rent discount to their tenants, equating to 11% of properties having had a rent reduction in place.
- 7.1.1.13 Established in April 2020, the Private Rented Sector Resilience Group provides a valuable mechanism for key stakeholders to discuss issues arising from the coronavirus outbreak and it assists in monitoring the impact, and continuing need for, these provisions. Meeting on a fortnightly basis, a key focus of the groups' work is on tenancy sustainment and raising tenants awareness of their rights, as well as the advice and financial support available, given the emerging evidence of an increase in rent arrears and a rise in those seeking housing advice.
- 7.1.1.14 The Social Sector Resilience Group meets fortnightly to discuss and resolve issues of common interest, to ensure that landlords can deliver and maintain essential services during the period of the coronavirus outbreak and also assists in monitoring the impact and ongoing need for these provisions.
- 7.1.1.15 Both the Social Sector and Private Rented Sector Resilience Groups were crucial in providing evidence to support the need for Ministers to use their powers to vary some of the notice periods which had been amended by the

³⁸ Joseph Rowntree Foundation research findings - <https://www.jrf.org.uk/blog/government-can-provide-housing-lifeline-coming-economic-storm>

³⁹ Bespoke analysis provided by PayProp, based on residential clients in Scotland who processed funds in all 5 months January to May 2020.

first Scottish Act, in order to address serious anti-social and criminal behaviour taking place in communities across Scotland.

- 7.1.1.16 As part of the continuing evaluation of the impact of private residential tenancy, the Scottish Government is participating in the three year Rent Better research programme (2019-2022) funded by the Nationwide Foundation as part of its Transforming the Private Rented Sector stream. Rent Better aims to understand the impact of the changes on tenants and landlords, and involves both quantitative and qualitative research with a wide range of stakeholders including families with children. Wave one fieldwork is complete with an overview report due later this year. Wave two will include the impact of coronavirus on private renters.
- 7.1.1.17 The Scottish Government assessed the potential impact of these provisions for tenants in relation to human rights, children's rights and equalities prior to the introduction of the legislation and continues to keep these rights under review when considering their continued necessity.
- 7.1.1.18 The impact on a landlord's human rights was also considered, with regards to their ability to control their property in relation to Article 1 of Protocol No.1 to the European Convention on Human Rights (ECHR). The Scottish Government's view is that the temporary nature of the provisions continue to strike an appropriate balance between the landlord's rights in the property, and the rights of the tenant to be protected during the pandemic. The maximum period of notice that the landlord will have to provide will be six months and the provisions will not affect notices which have already been issued under existing notice periods.
- 7.1.1.19 As we emerge from the emergency lockdown restrictions put in place at the outset of the COVID-19 pandemic, and we move through the Route Map, including the re-opening of the housing market, consideration has been given in the review of the proportionality and necessity of these provisions, to the detrimental impact of a landlord not being able to take action to resolve serious cases of anti-social or criminal behaviour. However, that consideration has not resulted in any changes during the reporting period to the continuing need for tenants across both the social and private rented sectors to be protected against eviction, for all other eviction grounds.
- 7.1.1.20 Recent briefing from the Joseph Rowntree Foundation⁴⁰ provides some information on the known impacts of the financial pressures related to the pandemic on people with one or more of the protected characteristics, including:
- A majority of households in all age groups except the over-55s reported extra costs as a result of the pandemic, reflecting more people complying with lockdown rules and staying at home for longer. Four in ten (42%) reported extra costs for food and three in

⁴⁰ Joseph Rowntree Foundation briefing - <https://www.jrf.org.uk/report/stronger-scottish-lifeline-economic-storm>

ten (30%) for gas and electricity. These numbers are significantly higher (63% and 45% respectively) for families with children. Around one in four households (23%) say they are not able to cover these extra costs comfortably.

- There are indications that the pandemic has created financial pressure which is impacting on mental health and family life. Two-thirds of parents relying on Universal Credit or Child Tax Credit report money worries having either a significant (25%) or moderate (40%) impact on their mental health.

7.1.1.21 The Scottish Government considers that the temporary legislative changes to protect renters continue to have a positive impact across those with protected characteristics, including women who are more likely to have caring responsibilities and therefore be impacted more significantly - socially and financially - by the consequences of the outbreak. An estimated 54% of householders in the social rented sector are female, with the equivalent percentage for private renting households being 43%⁴¹. The legislative measures continue to prevent all renters across all protected characteristics from being evicted during the current crisis. Research carried out by the Resolution Foundation in May 2020⁴² indicated that across the UK one-third of 18 to 24 year old employees had lost jobs or been furloughed, compared to one-in-six prime-age adults. In Scotland, over half (53%) of all highest income householders aged 16 to 24 live in the private rented sector, a total of 60,000 households⁴³. In terms of disability, 59% of households in the social rented sector in Scotland have someone living with a long term physical or mental health condition or illness.

7.1.1.22 Family households are, as expected, significantly impacted by the health crisis. There is no evidence of some groups of children and young people being affected disproportionately by the provisions. Keeping the measures in place whilst we recover from the social and economic crisis will ensure both children and young people living within rented family homes continue to be protected from homelessness, with an estimated 230,000 children living in the social rented sector⁴⁴ and 120,000 children living in the private rented sector⁴⁵.

7.1.1.23 The provisions remain necessary to ensure that tenants, including those who have become unemployed, or will become unemployed as the furlough scheme ends, have time to apply for, and receive, the available support in

⁴¹ Social tenants in Scotland 2017 - <https://www.gov.scot/publications/social-tenants-scotland-2017/pages/1/>

⁴² Resolution Foundation: young workers in the coronavirus crisis - <https://www.resolutionfoundation.org/app/uploads/2020/05/Young-workers-in-the-coronavirus-crisis.pdf>

⁴³ Scottish household survey 2018: annual report - <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/>

⁴⁴ Social tenants in Scotland 2017 - <https://www.gov.scot/publications/social-tenants-scotland-2017/pages/1/>

⁴⁵ Scottish household survey 2018: annual report - <https://www.gov.scot/publications/scotlands-people-annual-report-results-2018-scottish-household-survey/>

the short term and, if necessary, to give them time to plan for the longer term as we recover from this unprecedented crisis. The provisions also continue to be necessary in order to help mitigate any further pressure on housing, health and other public services.

7.1.2 Section 4 and schedule 3 – Children and vulnerable adults – Part 1 – Children

Description of provisions

- 7.1.2.1 **Child protection provisions:** The provisions remove the requirement for a second working day hearing to be held following the issuing of a Child Protection Order (CPO), and to amend timescales in relation to the issuing of Child Assessment Orders (CAO).
- 7.1.2.2 **Children’s hearings provisions:** The provisions relax existing requirements for the composition of children’s hearings, and the administration and conduct of children’s hearings and there are extensions to the timescales for when certain legal orders must be reviewed and appeals against legal orders lodged.
- 7.1.2.3 **Looked after children provisions:** The provisions extend the timescales for review of children’s cases when they are placed in kinship care and enable Local Authorities to use foster carers more flexibly to look after additional children when necessary.

Operation of Provisions in Reporting Period

- 7.1.2.4 This section provides supplementary information on the use of children’s provisions within Part 1 of schedule 3 of the first Scottish Act. Guidance⁴⁶ on the use of provisions has been published. The provisions have been separated into three groups: child protection provisions, children’s hearings provisions and looked after children provisions, as data comes from different sources and there are separate structures to assess continued necessity of the provisions within each group.
- 7.1.2.5 The data in relation to the use of the powers under section 4 and schedule 3, Part 1 covers the first reporting period 7 April to 20 May 2020; the second reporting period 21 May to 15 July 2020, and the third reporting period 16 July to 13 September 2020, unless specified otherwise below. Information on where data has been gathered has been included along with any caveats about the data provided.

Child protection provisions

⁴⁶ Coronavirus (Scotland) Act 2020 – Guidance on looked-after children and children’s hearings provisions - <https://www.chip-partnership.co.uk/wp-content/uploads/2020/04/Coronavirus-Scotland-Act-2020.pdf>

No requirement for a second working day hearing to be held following the issuing of a CPO

- 7.1.2.6 Under the first Scottish Act (schedule 3, paragraph 2(3) to (6)), which amends relevant provision of the Children's Hearings (Scotland) Act 2011 ('the 2011 Act'), the second working day children's hearing is not required. Instead a children's hearing to consider grounds for referral will sit on or before the eighth working day. Until the eighth working day, a child or relevant person can make an application for the CPO to be recalled or varied (ordinarily this would have been available until the second working day children's hearing under the 2011 Act) and for two working days following the second working day children's hearing (if the order is continued or varied by that hearing).
- 7.1.2.7 In the first reporting period, there were 83 CPOs⁴⁷; in the second reporting period there were 99 CPOs; in the third reporting period there were 92 CPOs. The use of this provision has meant that Scottish Children's Reporter Administration (SCRA) did not have to hold second working day children's hearings in these cases.

Amendment of timescales in relation to the issuing of CAO

- 7.1.2.8 These provisions were made under the first Scottish Act, schedule 3, paragraph 2(2). In the first reporting period, there were no CAOs; in the second reporting period one CAO was initiated⁴⁸ and in the third reporting period there were no CAOs. Although there is low usage, the provisions continue to be useful, proportionate, and necessary, particularly in light of the need to ensure that services can assess vulnerable children who are not visible to services during coronavirus, when necessary.

Children's hearings provisions

Relaxation of requirement for children's panel to consist of three members and relaxation of requirement to have a gender mix on each children's hearing

- 7.1.2.9 The provisions (first Scottish Act, schedule 3, paragraph 1) include relaxation of the requirement for children's hearings to consist of three members and to have a gender mix.
- 7.1.2.10 In the first reporting period, five hearings had fewer than three panel members in attendance, and one did not have both male and female members⁴⁹. In the second reporting period, 22 hearings had fewer than 3

⁴⁷ This data was provided by SCRA.

⁴⁸ This data was provided by the SCTS.

⁴⁹ This data is from Children's Hearings Scotland (CHS). It comes from reports from Area Support Teams (AST) from 7 April – 6 May and from 7 May onwards, data is drawn from survey of Panel Members feedback on hearings in which they participated and from AST reports. 317 responses were received, of which 276 were completed in full and 41 completed in part. It should be noted that the

panel members in attendance, and 18 did not have both male and female members. No hearings proceeded with only one panel member in attendance. The total number of hearings making use of the relaxation provisions during the reporting period was 30. This differs from the total making use of the two provisions (22 and 18, above) because both provisions can be used simultaneously (where, for example, a panel consists of 2 panel members of the same gender).⁵⁰

7.1.2.11 In the third reporting period, 18 hearings had fewer than 3 panel members in attendance, and 11 did not have both male and female members⁵¹. No hearings proceeded with only one panel member in attendance. The total number of hearings making use of the relaxation provisions during the reporting period was 26.

7.1.2.12 Since the powers came in to force, therefore, 45 hearings have had fewer than 3 panel members in place, and 30 did not have both male and female members. As noted above, there will be instances where both provisions were used at the same hearing. It is not possible to provide the exact total number of individual hearings making use of the relaxation powers since they came in to force, as the recording of this was not introduced until the second reporting period. The maximum total, however, would be 62 hearings (6 from the first reporting period, 30 from the second, and 26 from the third).

Maximum period for which a Compulsory Supervision Order (CSO) has effect

7.1.2.13 The first Scottish Act (schedule 3, paragraph 3) provides that if a hearing has not taken place to review a CSO before it expires, the order will not expire, unless six months have passed since the expiry date or the child has attained the age of 18 years. However, alongside this, there is a duty on the Principal Reporter to arrange a hearing before the original expiry date, and if not, to arrange the hearing as soon as practicable thereafter.

7.1.2.14 Within the first reporting period there were 467 CSOs, where orders were extended beyond their expiry date⁵². Within the second reporting period there were 862 CSOs, where orders were extended beyond their expiry

survey responses do not reflect reports on 100% of hearings. However, the National Convener also required AST to report when the powers have been used.

⁵⁰ For the second reporting period, CHS introduced a new survey collecting information on the composition of panels at hearings. Returns reporting on 826 hearings were received.

⁵¹ The data for the third reporting period is a combination of responses to the survey on the composition of panels at hearings, and AST notifications to the National Convener of when the powers have been used.

⁵² The data on this provision and all of the children's hearings provisions that follow is from the SCRA. Its case management system was not set up for recording the detail of this legislation so generating figures has been complex. To enable SCRA to provide accurate totals for the three periods, it has had to re-run period one and period two data. This has resulted in small changes in some of the figures as the report is based on live operational data which will be subject to change over time. SCRA's live operational data is regularly adjusted by staff when issues with data integrity become apparent and as cases progress. This is especially prevalent in SCRA data where the time between the reporting period and the production of the report is short.

date. In the third reporting period there were 926 CSOs where orders were extended beyond their expiry date. This provision has only been used to the extent necessary driven by the practicalities of holding children's hearings in the current context, and the extent of use will vary as the safety and operational contexts develop. Due to the severe restriction in the number of children's hearings which could be held, this provision has had the effect of extending a number of orders.

- 7.1.2.15 Prioritisation of work has been essential to ensure continuity of protections for children and young people and putting in place appropriate legal measures to keep children and young people safe. The SCRA has been unable to operate at anywhere near normal capacity as a result of movement restrictions, social distancing and virus prevention measures put in place and enforced. The SCRA is seeking to increase the number of hearings now that restriction measures are reducing. This will be by arranging face to face hearings, sometimes with some participants attending remotely, but also continuing to hold virtual hearings.
- 7.1.2.16 The Principal Reporter is applying a prioritisation framework to enable the timely consideration of individual cases to the maximum extent possible, in consultation with referring authorities and with children/relevant persons, and is closely monitoring the situation with a view to arranging such hearings as soon as practicable. While service user availability, views and preferences for rescheduling are only elements of 'practicability' - more significant considerations being need and risk - the SCRA has done so following dialogue with social workers and families. Those involved indicated they would prefer to come back at a later date to a face to face children's hearing. Reporters are reviewing these arrangements on a case by case basis, and taking into consideration whether there would likely be a risk of detriment to the child's welfare if the CSO was not varied or terminated before the original expiry date.
- 7.1.2.17 During the first reporting period there were 109 children's hearings when CSOs were due to expire. During the second reporting period there were 149 children's hearings when CSOs were due to expire. In the third reporting period there were 287 children's hearings when CSO's were due to expire. The number of hearings being held has been increasing since 4 May 2020 as the system has adapted and the number of reviews where CSO's were due to expire has also increased. The SCRA continues to review the necessity of the use of this provision and the scheduling of reviews as soon as practicable. The SCRA has developed a recovery plan which models review of all CSOs where the use of the emergency legislation will gradually be reduced and will cease to be used. This provision in the first Scottish Act allows an expiry review of a CSO to take place up to six months after the original expiry date. The use of this six month period will be reduced incrementally as the SCRA increases its capacity, and its ability to arrange expiry review hearings becomes mores practicable.

Maximum period for which Interim Compulsory Supervision Order (ICSO) or Interim Variation of Compulsory Supervision Order (IVCSO) has effect

7.1.2.18 To allow more flexibility for agencies seeking to respond in a prioritised way to the challenges posed by the coronavirus pandemic, paragraph 4(2) and (3) of schedule 3 of the first Scottish Act amend sections 86(3) and 140(4) of the 2011 Act. This provides that the maximum period for which an ICSO or an IVCSO has effect is:

- where the order is made by a children’s hearing, 44 days, or
- where the order is made by a sheriff, such other period as the sheriff may specify.

7.1.2.19 As with the existing legislation, a hearing may make an ICSO or interim variation for a shorter period than the maximum period.

7.1.2.20 Table Two below sets out the interim orders where the provision has been used (some children will have had more than one interim order issued in the period and the figures include orders which authorised secure accommodation). It is not possible to calculate how much time has been added; some orders will have had the maximum time (44 days for a hearing/ possibly longer for the Sheriff Court) and others will have had different times up to the maximum.

Table Two – Interim orders where the provision has been used

	Report Period 1	Report Period 2	Report Period 3	Total
Interim Order Type				
ICSO	270	367	421	1,058
IVCSO	151	147	170	468
Court ICSO / IVCSO (including following appeal)	223	271	267	761
Total	644	785	858	2,287

Period within which children’s hearing must be heard in certain cases - secure care and other place of safety placements

7.1.2.21 In the first reporting period, of 16 interim orders authorising the use of secure accommodation, 9 used the extended timescales which are available under the provision. In the second reporting period of 28 interim orders authorising the use of secure accommodation, 12 used the extended timescales which are available under the provision. In the third reporting period of 26 interim orders authorising the use of secure accommodation, 11 used the extended timescales which are available under the provision. The provision extends the timescales to hear an appeal to seven working days from three working days

in situations that the existing permitted timescales i.e. three days, is not practicable.

Extended timescale following emergency transfer of a child or young person to secure accommodation

7.1.2.22 The first Scottish Act (schedule 3, paragraph 6) allows the Principal Reporter the discretion to extend the period within which a children's hearing must be held by 24 hours (from 72 hours to 96 hours) where it is not practicable to meet the existing timescale. The SCRA continues to record fewer than 5 cases where a young person has been kept in secure accommodation for an additional 24 hours before coming to a children's hearing, across all 3 reporting periods. While section 4 and schedule 3, Part 1, paragraph 6 has been used in the current reporting period, it was expired as of 29 September 2020. Further detail on the decision to expire the provision is included within the Policy Note⁵³ which accompanies the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020.

Modification of certain time limits for making and determination of appeals

7.1.2.23 Paragraph 7 of schedule 3 of the first Scottish Act extends the time limits for the making, disposal or determination of appeals or the making or lodging of applications. Disaggregated data is not available from the SCRA or the SCTS.

7.1.2.24 The SCRA has supplied data in relation to appeals which were lodged under the provisions of the first Scottish Act after 7 April 2020 and were determined before 13 September 2020. The SCRA does not record the data to distinguish appeals specifically modified by the provisions of the first Scottish Act, but it has been able to provide figures which indicate the current position in relation to appeals of decisions from the children's hearing.

7.1.2.25 Schedule 3, paragraph 7(2) of the first Scottish Act extends the period of time available for a person with the right to appeal a decision of a children's hearing to lodge that appeal at the Sheriff Court (from 21 to 42 days). There have been 48 appeals of decisions in relation to a CSO that have been determined in the period 7 April to 13 September 2020, and the average time taken from the date of the children's hearing to the determination of the appeal was 44 days.

7.1.2.26 Schedule 3, paragraph 7(3) of the first Scottish Act extends from three to seven days the time limits for the determination of certain short notice appeals. There were 117 appeals of ICsOs determined in the period 7 April to 13 September 2020, and the average time taken from the date of the children's hearing to the determination of the appeal was 18 days (please

⁵³ The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 Policy Note - <https://www.legislation.gov.uk/ssi/2020/249/policy-note/contents>

note that appeals may not have been lodged until several days after the hearing).

- 7.1.2.27 Schedule 3, paragraph 7(4) of the first Scottish Act extends the time limit for making an appeal in relation to a relevant person determination from 7 to 21 days and extends the time period for determination of the appeal in relation to a relevant person determination from 3 to 7 days. There were 8 appeals of relevant person determinations (made by a children's hearing or a pre-hearing panel) in the period 7 April to 13 September 2020 and the average time taken from the date of the children's hearing to the determination of the appeal was 26 days for the children's hearing decision and 12 days for the pre-hearing panel decision (please note that appeals may not have been lodged until several days after the hearing).
- 7.1.2.28 Schedule 3, paragraph 7(5) of the first Scottish Act extends the time limits for lodging appeals in relation to a decision affecting a contact direction or permanence order from 21 to 42 days and extends the time for determination of the appeal from 3 to 7 days. The SCRA recorded no appeals of this type in the period 7 April to 13 September 2020.
- 7.1.2.29 Schedule 3, paragraph 7 sub paragraphs (6), (7) and (8) extends the time limit for lodging appeals to the Sheriff Appeal Court or Court of Session in relation to certain decisions made by sheriffs under the 2011 Act. The time limit is extended from 28 days to 56 days. There have been no appeals made against decisions to which the extended time limit applies in the period 7 April to 13 September 2020.

Dispensation with physical attendance at children's hearings

- 7.1.2.30 Schedule 3, paragraph 8 of the first Scottish Act covers attendance of persons other than children or relevant persons to facilitate remote attendance of other persons. There is existing provision in rule 19 of the procedural rules to enable attendance by other means.
- 7.1.2.31 The majority of the 4740 children's hearings that have taken place over the reporting periods have been 'virtual children's hearings' as children, family members, professionals, reporters and the decision makers (panel members) have been unable to attend the public spaces in children's hearings centres. Since the end of July 2020, SCRA has been opening up children's hearings centres in a safe, socially distanced manner and the number of hearings where children and families have been able to attend in person has increased.

Authentication of children's hearings documentation by electronic signature

- 7.1.2.32 Schedule 3, paragraph 9 of the first Scottish Act covers authentication of documents by electronic signature. This power has been used in all of the 4740 children's hearings held over the reporting periods.

Looked after children provisions

- 7.1.2.33 Schedule 3, paragraph 10 of the first Scottish Act extends the timescales for review of children's cases when they are placed in kinship care and enables Local Authorities to work with foster carers more flexibly to look after additional children when necessary. Where possible, Local Authorities have adhered to the previous timescales, but the provisions have allowed additional flexibility in pressured situations which has allowed Local Authorities to take into account the views of the children and where possible keep children within their extended families.
- 7.1.2.34 21 Local Authorities across Scotland have been able to provide data on the use of these provisions between 11 July to 31 August 2020. Use of the provisions has been relatively low, and varied between Local Authority areas. Some Local Authorities have not needed to use any of the provisions as their social work teams had enough capacity to respond to demand.
- 7.1.2.35 The provisions have been used to allow more than three children to be placed with a foster carer eight times during the third reporting period. There have been five instances of a child being placed with a kinship carer, in an emergency, for a period not exceeding five working days, rather than three working days, a kinship placement has been extended in an emergency twice, and the timeframes for a kinship review has been extended once during the third reporting period.
- 7.1.2.36 Whilst not all Local Authorities have needed to use the provisions, there has been a general consensus that the provisions have been helpful to allow the right decisions to be made for a child, and that they may be useful if there is a surge in referrals over the winter which could place additional pressure on foster or kinship placements.

Factors Considered to Determine Use and Continued Necessity

- 7.1.2.37 The main factors which have been considered in the assessment of continued necessity of the provisions include: prevailing Government guidance and public health advice, an assessment of the impact of the pandemic on the health and availability of staff and volunteers, and an assessment of the impacts on vulnerable and disadvantaged children and families. In the context of this emergency, these provisions are designed to enable best use of very limited resources in Local Authorities, and the children's hearings system, so that efforts can be focused on safeguarding the welfare of Scotland's most vulnerable children and on supporting families and carers who need it most. The measures in the first Scottish Act are limited to those considered necessary to support and protect children's rights and promote their welfare and wellbeing in accordance with obligations under the UN Convention on the Rights of the Child.
- 7.1.2.38 The Scottish Government is in regular dialogue with the children's services sector and children's hearings partners to monitor the impact of the pandemic on service provision and the protections afforded to children.

7.1.2.39 In relation to the provisions covering child protection, children’s hearings and looked after children, the Scottish Government is aware that there is continued pressure on services in relation to vulnerable children and these provisions continue to be necessary. There is continued uncertainty about the impact any local outbreaks or resurgence of the virus may have on services. Children’s hearings partners are returning to face to face hearings but there will be a blended model of virtual and face to face for the foreseeable future and this continues to put pressure on the capacity of the system.

7.1.3 Section 4 and schedule 3 - Children and vulnerable adults – Part 2 - Vulnerable adults

Description of Provisions

7.1.3.1 Paragraph 11(1) modifies the application of certain adults with incapacity principles in the use of section 13ZA of the Social Work (Scotland) Act 1968. Paragraphs 11(2) and 11(3) effectively ‘stop the clock’ on the duration of guardianship orders and certificates authorising medical treatment for the period the emergency legislation is in force.

Operation of Provisions in Reporting Period

7.1.3.2 The powers under paragraph 11(1) of this section have not yet commenced and therefore the powers have not been used in the reporting period.

7.1.3.3 Paragraphs 11(2) and 11(3) of this section commenced on 7 April 2020 and the powers under these sections have been used in the reporting period. In relation to expiry of guardianships, the first report stated in the period 7 April to 21 May 2020, 150 guardianships were due to expire and will have had the clock stopped when the provisions came into force. In the second reporting period (22 May to 31 July 2020), 294 guardianships were due to expire and had the clock stopped. In this (the third) reporting period (1 Aug to 30 September) 223 guardianships were due to expire and had the clock stopped.

Factors Considered to Determine Use and Continued Necessity

Paragraph 11(1)

7.1.3.4 The aim of the amendments to section 13ZA of the Social Work (Scotland) Act 1968, was to put provisions in place to ensure the safety of the adult, for instance where they might be in an acute hospital ward which was expecting a large influx of coronavirus patients, putting the adult at risk. In these cases the section 13ZA amendment provides a way to move the adult quickly, and with legal authority, to a more suitable location.

- 7.1.3.5 In the reporting period, the powers under this section have not required to be used. This may be in part due to a reduction in delayed discharge since the provision was introduced. Delayed discharge figures, which are monitored by the Scottish Government, have come down substantially since the section 13ZA amendments were put in place. As of 9 September 2020, they have reduced by 36% (588 beds) since the 4 March 2020 baseline. The Scottish Government is liaising very closely with Health and Social Care Partnerships on their procedures around discharge in order to maintain the gains made since the 4 March 2020 baseline and to improve the pathway in moving adults lacking capacity from hospital to other more suitable accommodation with appropriate legal authority.
- 7.1.3.6 Amendments to section 13ZA remove the requirement to consult with the adult or interested parties and also allow the Local Authority to use the powers in section 13ZA where there is an existing guardian, welfare attorney or intervener with relevant powers.
- 7.1.3.7 Article 5 of the ECHR (right to liberty and security) could be engaged in particular with these amendments as they could be used to empower the Local Authority to speedily move adults from acute hospital beds to other more appropriate accommodation.
- 7.1.3.8 Article 8 of the ECHR (right to respect for private and family life) may also have been engaged here in that Local Authorities can provide services without involving the views of the adult, or other relevant party including any guardian, welfare attorney or intervener.
- 7.1.3.9 The Scottish Government has been very sensitive to the human rights impacts associated with these provisions and has liaised very closely with stakeholders regarding the ongoing review of continued necessity of these provisions. Having considered stakeholder feedback, the Scottish Government has concluded that these provisions are no longer necessary and should be expired. Ministers have considered a fine balance of human rights between the right to life and the right of a person and any interested parties to be consulted in any decisions that might affect them. These provisions required regulations to come into force, which were never brought forward by Ministers, even at the height of the pandemic. Given improvements in knowledge and practice since then, Ministers consider that there are no conditions likely to occur where it would be suitable to use these provisions. Section 4 and schedule 3, Part 2, paragraph 11(1) was expired on 29 September 2020.

Paragraph 11(2) and (3)

- 7.1.3.10 The powers to ‘stop the clock’ on the duration of guardianship orders and section 47 certificates commenced on 7 April 2020. At the end of the emergency legislative period, the time remaining on the orders and certificates will resume and applicants will have to renew their guardianship or obtain another certificate as per the usual procedure.

- 7.1.3.11 These emergency provisions prevent the expiry of guardianships, or section 47 certificates, through want of being able to get an application through court, or to get a relevant health professional (normally a doctor) to authorise the certificate. A medical practitioner and a specialised mental health doctor are required to complete reports for guardianships as well as mental health officers.
- 7.1.3.12 The factors which have been taken into consideration are the availability of the courts, the Office of the Public Guardian and relevant health professionals. In the first reporting period the courts were only processing urgent interim guardianship cases, meaning that guardianship cases were likely to expire before the renewal application could reach court. The courts are now processing guardianship cases as business as usual.
- 7.1.3.13 The Office of the Public Guardian has increasing numbers of staff working in the office, as well as those working from home. There has also been adaptation by all concerned, including health professionals, in dealing with cases using digital and remote methods.
- 7.1.3.14 The courts are processing guardianship work as business as usual and advise they are able to cope with any extra work that suspending the guardianship provisions might bring. There remain challenges in obtaining medical and mental health officer reports to support adults with incapacity applications and renewals.
- 7.1.3.15 The Mental Welfare Commission requested that these provisions were added into the emergency legislation. It advised of the difficulties professionals are experiencing and reporting in being able to 'see' people in order to make assessments for guardianships and for section 47 certificates. It stated that there remains a need to balance public health concerns, especially with regard to resurgence of the virus, with all other considerations (including social distancing measures).
- 7.1.3.16 The Office of the Public Guardian reports that the number of renewals is 18% of the total number of guardianships since they began business in 2001 and implies that a large percentage of guardianships will have been extended when they would have normally expired without renewal. Although there are no statistics available, it is possible that the same applies to certificates to authorise medical treatment under section 47 of the Adults with Incapacity (Scotland) Act 2000. The principle in section 1(3) of the Adults with Incapacity (Scotland) Act 2000 is that an intervention shall be the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention. Under these amendments, they will continue for the period the emergency provisions are switched on.
- 7.1.3.17 The practical view of the availability of doctors and mental health officers to complete reports is a mixed one. Some Health and Social Care Partnerships were of the view that the provisions could expire, as they had resources in place and others wanted to extend the provisions, based on a co-ordinated and gradual approach to full recovery.

7.1.3.18 Given the mixed view on the availability of health professionals, the improved capacity of the courts and Office of the Public Guardian and the serious human rights considerations in extending these provisions for another six months, Ministers have decided to suspend these provisions from 30 September 2020. The Coronavirus (Scotland) Act 2020 (Suspension: Adults with Incapacity) Regulations 2020 (SSI 2020/267)⁵⁴ were laid in Parliament on 1 September 2020 and came into force on 30 September 2020. Should circumstances arise post 30 September 2020 and during the life of Part 1 of the first Scottish Act, where they might be required, for instance because of resurgence of the virus, the provisions can be revived, however a further SSI is required to do this, which would be subject to scrutiny by the Parliament.

7.1.4 Section 5 and schedule 4, Part 4 - Extension of time limits

Description of Provision

- 7.1.4.1 The provision suspends certain time limits contained in the Criminal Procedure (Scotland) Act 1995 for certain set periods of time i.e. the suspension of the relevant time limits are not for indefinite periods of time.
- 7.1.4.2 The provisions have the effect of increasing the maximum time period that an accused person can be held on remand prior to trial, together with other time limits for progressing a criminal case including the maximum wait prior to trial where the accused is not in custody. This may have an impact on the rights guaranteed by Articles 5(3) and 6(1) of the of the ECHR. However, the Scottish Government considers that these increases are compatible with the rights under Articles 5(3) and 6(1) to a trial within a reasonable time. The increases are necessary to address the disruption to the justice system that is already being caused by coronavirus.
- 7.1.4.3 In any individual case, where an accused is brought before the court for a custody hearing, in determining whether to grant bail, the court requires to consider the accused's Article 5 and 6 rights in deciding whether it is appropriate to grant bail. Furthermore, an accused person can, at any time, apply to the court for a bail review under section 30 of the Criminal Procedure (Scotland) Act 1995, to enable the court to determine whether their continued detention is justified. The courts remain subject to the requirement to ensure that there is a fair and public hearing within a reasonable time. These safeguards are relevant to ensuring that these provisions are proportionate.

Operation of Provision in Reporting Period

⁵⁴ The Coronavirus (Scotland) Act 2020 (Suspension: Adults with Incapacity) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/267/made>

7.1.4.4 The time limits to which the provision applies are: those under section 65 of the Criminal Procedure (Scotland) Act 1995 which sets various time limits in respect of trials under solemn procedure; section 136, which requires that proceedings in summary cases must commence within six months of the alleged offence; section 147, which makes provision for summary procedure in cases where the accused has been held on remand; and section 52T, which applies the custody time limits in sections 65 and 147, where the accused is detained in hospital because of an assessment order or a treatment order. The provision applies automatically in respect of any criminal case where one of those time limits was in effect on the date when the Act was commenced, or began after the Act commenced.

Factors Considered to Determine Use and Continued Necessity

7.1.4.5 The court system continues to be under significant pressure with a backlog of cases building. Steps are being taken to seek to address this. High Court trials restarted in July (20 July in Edinburgh and 21 July in Glasgow) in new formats designed to ensure a safe and secure process for all involved, in compliance with public health guidelines on physical distancing and hygiene.

7.1.4.6 In addition, the Scottish Government has provided funding of £5.5 million to SCTS to establish the ground-breaking solution of remote jury centres to rapidly increase the number of Scottish High Court trials. The use of these jury centres, based in cinema complexes - with the availability of reliable and modern technology, coupled with the ability to provide nationwide participation and a streamlined contractual process - is regarded as the most credible and deliverable proposition to take forward jury trials in the current COVID-19 context. The first trials will get underway on 28 September 2020 in Edinburgh, and will get underway from 12 October 2020 in Glasgow.

7.1.4.7 The move towards remote jury centres will assist in preventing further backlogs building up in the High Court, but further work will continue to be required to address the existing backlog and the serious issues also present in Sheriff and Jury cases.

7.1.4.8 Summary criminal trials will return in some volume over time, with lower case loadings (trials will be scheduled in reduced numbers to ensure physical distancing is maintained). This of course does not mean the summary courts will be dealing with the backlog of cases that has built up, but will help ensure an improved flow of cases to reduce the rise in the backlog.

7.1.4.9 Justice Analytical Services is working with SCTS to collect data to monitor the backlog of cases in the courts, which will help inform future assessments of the continuing need for this extension of time limits. However, with crime levels back to near pre-COVID-19 levels and the courts still operating at some way below pre-COVID-19 levels, the need for

flexibility in time limits clearly remains and is likely to do so for a considerable time.

7.1.4.10 The Justice Board for Scotland, which brings together senior leaders from Scotland's main national justice system organisations, has established a Criminal Justice Board to co-ordinate COVID-19 recovery activity across policing and justice, including in the criminal courts. The Board meets every two weeks to direct and monitor progress and ensure a whole system overview of the work underway.

7.1.4.11 The Scottish Government keeps under review the necessity for the extended time limits contained within Part 4 of schedule 4 of the first Scottish Act. It is however the case that while some courts are operating in a way they were not at the time of the legislation being passed in April 2020, there is a significant backlog of cases continuing to grow as the court system is some considerable way off returning to its normal operation. This is also within the context that crime levels are back to near pre-COVID-19 levels. Even once courts are operating more normally, a backlog of cases will exist whereby the operation of extended time limits will potentially be necessary. At this time, the Scottish Government considers the extended time limits continue to be necessary with an accused's person rights continuing to be protected through the operation of the system of bail reviews which an accused person can seek at any time under section 30 of the Criminal Procedure (Scotland) Act 1995 if information was provided material to the decision that was not available when the accused was remanded. This can be used where, for example, the continuing impact on the operation of the courts means timings for when a case will be heard have changed.

7.1.5 Section 5 and schedule 4, Part 8 - Release of prisoners

Description of Provision

7.1.5.1 The provision allows that the Scottish Ministers may, by regulations, provide that a person who falls within a class of persons specified in the regulations is to be released from prison early.

Operation of Provision in Reporting Period

7.1.5.2 The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/138)⁵⁵ and the Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/137)⁵⁶ were made by Scottish Ministers and came into force on 4 May 2020, and operated for 28 days until 1 June 2020. As such the powers were applied in

⁵⁵ The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/138/contents/made>

⁵⁶ The Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 - <http://www.legislation.gov.uk/ssi/2020/137/contents/made>

the first and second reporting period, but have not been utilised during the third reporting period.

- 7.1.5.3 Details of the eligibility criteria and exclusions applied, and statistics on the operation of the 4 May to 1 June 2020 process, were included in the reports on the first and second reporting periods.

Factors Considered to Determine Use and Continued Necessity

- 7.1.5.4 The Scottish Government considers that the May/June release process was a proportionate measure which helped deliver the necessary and timely reduction in the prison population. This provided the necessary capacity and operational flexibility for the Scottish Prison Service (SPS) to manage the needs of prisoners to shield or self-isolate, as well as protecting the health of prison staff, and managing the higher levels of staff absence caused by ill-health and health protection measures.

- 7.1.5.5 However, given the potential for a future resurgence of the virus and a possible resultant need for greater restrictions and protective measures within the prison system (as have already been necessary on a local basis on a number of occasions), and the potential for increases in the prison population, it may become necessary to utilise these powers again to maintain safe and effective operations of prisons, and protect the health of prison staff and prisoners. The Scottish Government will continue to engage with SPS in relation to the potential use of these powers, as one aspect of wider ongoing discussions of the impact of coronavirus on the prison system, and the safe management of the prison population. The Scottish Government will also liaise with other justice sector stakeholders who are most impacted by the prisoner release measures.

- 7.1.5.6 As with the previous use of this power, any decisions on future release of additional prisoners would be made with regard to the legislative requirements contained in the first Scottish Act, and wider public safety and human rights concerns. It would require the production of regulations specifying the eligibility criteria and handling of the process, which would be laid before Parliament for scrutiny and approval.

- 7.1.5.7 The first and second two-monthly reports on the Coronavirus Acts have included detail on the factors considered to determine the previous use of these powers, including the engagement with wider stakeholders for the planning and delivery of the release process, and the particular consideration given to equality, human rights, and domestic abuse impacts.

7.1.6 Section 7 and schedule 6, Part 2 – Freedom of Information

Description of Provision

- 7.1.6.1 Prior to the repeal of the provisions mentioned below, the provisions extended the statutory deadlines under the Freedom of Information

(Scotland) Act 2002 (FOISA) for responding to Freedom of Information (FOI) requests and reviews by an additional 40 working days; gave the Scottish Ministers the power, by direction, to specify circumstances where a Scottish public authority could extend that deadline; gave the Commissioner discretion to decide that, where failure to comply with a deadline was due to the effect of coronavirus, an authority had not failed to comply; and enabled the Commissioner and other Scottish public authorities to issue notices by electronic means.

Operation of Provision in Reporting Period

- 7.1.6.2 Paragraphs 3 and 4 of schedule 6 extended the deadlines for responding to FOI requests and reviews by an additional 40 working days. The extension applied to both new requests and those outstanding when the first Scottish Act came into force, but the requirement within FOISA to comply promptly with requests was otherwise unchanged. These provisions were repealed by the second Scottish Act and therefore were not in operation in this third reporting period.
- 7.1.6.3 The power of the Scottish Ministers, as conferred by paragraph 5 of schedule 6, was repealed in the first reporting period and therefore was not in operation in this third reporting period.
- 7.1.6.4 Where an appeal is made to the Commissioner in respect of a failure to comply with a relevant deadline, paragraph 6 of schedule 6 gives the Commissioner discretion to decide that a Scottish public authority has not failed to comply in certain circumstances. As passed, the Commissioner could exercise this discretion where the failure was due to the effect of coronavirus. The second Scottish Act amended paragraph 6 so that the Commissioner could also take into account the effects of repealing paragraphs 3 and 4. It also amended paragraph 6 so that the public interest in prompt compliance is the primary consideration in deciding whether a failure was reasonable in all circumstances. Information in respect of the use of this element of the provision will be held by the Commissioner.
- 7.1.6.5 Paragraph 7 of schedule 6 allows the Commissioner and other Scottish public authorities to issue notices by electronic means. Information in respect of the use of this element of the provision will be held by the Commissioner and by individual authorities.

Factors Considered to Determine Use and Continued Necessity

- 7.1.6.6 Physical distancing measures remain in place and at the present time home-working remains the default position for most office-based workers in Scotland. When circumstances do allow the reopening of more indoor office spaces, this will take place on a phased basis to ensure safety. Therefore, Scottish public authorities may continue to experience significant disruption that may impact on their ability to respond to FOI requests for some time, so the power at paragraph 6, conferring discretion on the Commissioner, remains necessary.

7.1.6.7 The Commissioner's office is likely to require to operate a level of remote working for some time, so the power at paragraph 7, to issue notices electronically, remains necessary to enable decisions to be issued and to reduce disruption to the Commissioner's statutory functions. Other authorities are likely to benefit in the same way.

7.1.7 Section 8 and schedule 7, paragraphs 1 to 5 - Social security

Description of Provision

7.1.7.1 These provisions relax timescales which apply to clients seeking (and Social Security Scotland making) a redetermination, and clients bringing an appeal before the First-tier Tribunal for Scotland, where normal timescales cannot be met for reasons related to coronavirus. Other provisions modify timescales for making applications where these have not been able to be met directly as a result of coronavirus.

Operation of Provision in Reporting Period

7.1.7.2 Where a client has cited disruption caused by coronavirus as the reason for a late application or late request for an appeal or redetermination, Social Security Scotland has used the powers to allow the late application or request to be considered. There have also been occasions where Social Security Scotland has extended its timescales for redetermination where an appeal was received after the 31 day deadline for submission had passed.

Factors Considered to Determine Use and Continued Necessity

7.1.7.3 The key factor in the continuing necessity of these provisions is the continued disruption created by coronavirus. Where this is likely to have an impact on people's ability to make applications for benefits in timely fashion or make a request for a redetermination or appeal, including to gather and receive supporting information, or where it could have an impact on the timing of their award of a qualifying benefit, there will be a need for these provisions. Similarly, where the continued disruption created by coronavirus impacts on Social Security Scotland's ability to process redeterminations, or on a clients' ability to gather information requested in support of their redetermination, the extended timelines for redetermination should remain in place.

7.1.7.4 Social Security Scotland is however required to make the redetermination as soon as reasonably practicable within the extended redetermination period; this provides a safeguard to ensure that clients' rights to receive a decision as quickly as possible and subsequently appeal rights to the First-tier Tribunal, are respected.

7.1.7.5 Evidence suggests that these provisions, including provisions to extend the timescales allowed for re-determinations and appeals, are of benefit to

clients – for example, clients have cited delays in obtaining evidence that they wish to submit.

- 7.1.7.6 During the period in which provisions have been in force, Social Security Scotland has extended the timescales for a re-determination on 18 occasions, taking an average 30 days to complete these re-determinations. Clients are citing COVID-19 as the reason for not being able to provide evidence sooner and on these occasions. Social Security Scotland is working with the clients by extending and ensuring their application is determined as quickly as possible. Social Security Scotland is only aware of one occasion where an appeal was received after the 31 days and the Tribunal accepted this appeal sighting COVID-19 as a factor for accepting the late appeal.
- 7.1.7.7 Social Security Scotland's continuing review of the operation of the provisions in the period indicates that these extensions are providing some benefit to clients, in helping them access their rights despite the impact of coronavirus. The latitude for extending timescales is only being used when absolutely necessary as Social Security Scotland's aim remains to process cases within target deadlines whenever possible. However, Social Security Scotland is of the view that there remains a need to have these extensions in place as a contingency against further disruption to services and clients' circumstances, for example, if there was a resurgence of the virus.

7.2 Second Scottish Act

7.2.1 Section 2, schedule 1, Part 1: Student residential tenancy: termination by tenant

Description of Provision

- 7.2.1.1 This makes provision in relation to tenancies for students in halls of residence and Purpose Built Student Accommodation (PBSA). There is 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 the agreement was entered into while the second Scottish Act is in force. Students can only terminate tenancies for a reason relating to coronavirus.

Operation of Provision in Reporting Period

- 7.2.1.2 The Scottish Government understands from informal consultation with stakeholders that the seven day notice period has been utilised by students who had returned home prior to lockdown and were no longer occupying their property, and by students who wished to return home prior to the end of their contract. This provision has allowed students to end their contract earlier than existing arrangements would have allowed had these provisions not been in place. This is of particular importance given that

colleges and universities adopted alternative learning models from face to face teaching in response to coronavirus.

- 7.2.1.3 The 28 day notice period has given students looking to find suitable accommodation for the next academic year reassurance that, should restrictions continue or more restrictive measures be re-introduced, either locally or nationally, that prevent students from taking up their accommodation as planned, they will not be held liable to pay for accommodation they are not able to use.
- 7.2.1.4 The Scottish Government has consulted the Student Accommodation Group to develop and issue a survey to accommodation providers to gather further evidence on the extent of use of the provisions ahead of future reporting periods, and to inform ongoing monitoring of implementation of the provision. This survey has now been agreed with the Student Accommodation Group and will be issued shortly after the end of this third reporting period.

Factors Considered to Determine Use and Continued Necessity

- 7.2.1.5 The provisions remain necessary to ensure that should restrictions continue or more restrictive measures be re-introduced, either locally or nationally, that prevent students from taking up their accommodation as planned, they will not be held liable to pay for accommodation they are unable to use.
- 7.2.1.6 Student accommodation providers set their own contract terms within tenancy agreements with students and terms will vary across the sector. Given the nature of student residential tenancies, contracts typically run for the entire length of the contract, with no provision for early release. The continuation of the notice to leave periods will be necessary to ensure students are not disadvantaged by any further measures required in response to coronavirus.
- 7.2.1.7 The Scottish Government assessed the potential impact of these provisions on human rights, children's rights and equalities prior to the introduction of the legislation and continues to keep these rights under review when considering their continued necessity. The Scottish Government's view is that the temporary nature of the provisions continue to strike an appropriate balance between the rights of student accommodation providers and the rights of the students during the pandemic.

7.2.2 Section 2, schedule 1, Part 2: Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears

Description of Provision

7.2.2.1 The provisions provide Scottish Ministers with the power to specify pre-action requirements for private landlords seeking to end a private tenancy due to rent arrears, where those arrears relate to the period during which paragraph 4 of schedule 1 of the second Scottish Act is in force. 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 deciding whether it is reasonable to grant an order for repossession.

Operation of Provision in Reporting Period

7.2.2.2 The provisions were in force during the reporting period. The regulation making powers were used in this reporting period. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020⁵⁷ (SSI 2020/304) came into force on 30 September 2020.

Factors Considered to Determine Use and Continued Necessity

7.2.2.3 Schedule 1 of the first Scottish Act makes most grounds for repossession in the private rented sector discretionary, including for rent arrears. This temporarily changed the original position whereby the First-tier Tribunal for Scotland (Housing and Property Chamber) must grant a repossession order if the level of arrears is in accordance with the criteria laid out in the relevant legislation. This change ensures that the Tribunal considers the reasonableness of making a repossession order during the coronavirus outbreak.

7.2.2.4 The introduction of regulations under the provision temporarily set pre-action requirements that will apply where all or part of the rent arrears have originated in the period during which paragraph 4 of schedule 1 of the second Scottish Act is in force. The extent to which a landlord has complied with these requirements must be taken into account by the First-tier Tribunal for Scotland (Housing and Property Chamber) when deciding whether it is reasonable to grant a repossession order.

7.2.2.5 The introduction of regulations formalises the steps landlords should take in relation to working with tenants to manage arrears prior to seeking repossession during the coronavirus pandemic.

7.2.2.6 The Scottish Government has assessed the potential impact of these provisions on human rights, children's rights and equalities and considers the introduction of pre-action requirements will have a positive impact across those with protected characteristics including women and disabled people who may have been impacted by the consequences of coronavirus. We also consider these measures support the right to adequate housing under the International Covenant on Economic, Social and Cultural Rights by ensuring appropriate safeguards are in place to prevent unnecessary eviction.

⁵⁷The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/304/contents/made>

7.2.3 Section 2, schedule 1, Part 7: Care homes

Description of Provision

- 7.2.3.1 These provisions make changes to the Public Services Reform (Scotland) Act 2010 (the '2010 Act') for a limited time period to allow for the issuing of Emergency Directions and Emergency Intervention Orders.
- 7.2.3.2 Emergency Directions - Health Boards can make specific asks of care home providers where they believe there is a material risk to health within the care home due to coronavirus. These asks must relate directly to reducing the risk to health. Where the Health Board believes they have not been complied with, it can, subject to the court's approval, take steps to ensure they are carried out.
- 7.2.3.3 Emergency Intervention Orders - Ministers may apply to the court to appoint a nominated officer to temporarily take over the operation of a care home if there is a serious risk to life, health or wellbeing within the home. Where there is an imminent and serious risk to life or health, Ministers can exercise the powers before making an application to the court.

Operation of Provision in Reporting Period

- 7.2.3.4 Paragraph 16 of schedule 1 adds temporary modifications to Part 5 of the 2010 Act, adding in sections 63A and 63B.
- 7.2.3.5 Section 63A requires that where the Health Board considers that, for a reason relating to coronavirus, there is a material risk to the health of persons at the specified accommodation, the Health Board may issue a direction to the service provider to take specific steps. Section 63B gives Health Boards the power to act where a section 63A direction has not been complied with.
- 7.2.3.6 Although these powers have been commenced and are available, they have not been used in this reporting period. A Health Board has not yet been required to issue a direction to a care home using this legislation. Consequently, Health Boards have not had to use the power to act when said direction has not been complied with.
- 7.2.3.7 Paragraph 17 of schedule 1 inserts sections 65A and 65B into the 2010 Act.
- 7.2.3.8 Section 65A provides that Scottish Ministers may apply to a Sheriff Court or Court of Session for an Emergency Intervention Order in respect of a care home service provided at a care home which is stated in the application.
- 7.2.3.9 Section 65A subsection (2) sets out that an Emergency Intervention Order is an order which authorises the Scottish Ministers to nominate a person to act as a nominated officer. The nominated officer is authorised to (1) enter and occupy the accommodation (2) direct the provision of the care home service at the accommodation and (3) do anything that the officer considers necessary to ensure that the care home service is provided to an appropriate

standard. It also requires the providers of care to comply with any direction given by the nominated officer in relation to the provision of care.

- 7.2.3.10 Subsection (7) provides that the court must make an Emergency Intervention Order if it appears there is, due to coronavirus, a serious risk to the life, health or wellbeing of people at the care home.
- 7.2.3.11 As of yet, Scottish Ministers have not made an application to the courts for an Emergency Intervention Order in relation to coronavirus under these powers. The Care Inspectorate updates Ministers of any care home providers with which they have serious concerns and provide regular updates to them to enable emergency action to be taken if required.
- 7.2.3.12 Section 65B provides that Scottish Ministers may make further provisions to the Emergency Intervention Orders by regulations. Those regulations are subject to the 'made affirmative' procedure and will last for 28 days unless they are laid before Parliament and approved.
- 7.2.3.13 Powers under section 65B were used in the previous reporting period and as a result, the Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/201) ⁵⁸ came into force on 3 July 2020. They make further provisions to the emergency intervention powers set out under section 65A, including: enabling the nominated officer to delegate actions to others; allowing Scottish Ministers to obtain information from relevant bodies; and limiting claims for compensation.
- 7.2.3.14 No further regulations have been made under powers in section 65B during this third reporting period.

Factors Considered to Determine Use and Continued Necessity

- 7.2.3.15 Scotland's care infrastructure and the robust inspection regime of the Care Inspectorate is such that when these measures were implemented it was considered that they would only need to be exercised in exceptional circumstances. Therefore, the fact the powers have not been used, does not mean that the rationale behind the implementation of these measures has ceased to be valid.
- 7.2.3.16 The legislation builds on established powers and ensures that immediate action can be taken if continuity of care is jeopardised. Having these powers available permits Health Boards and Scottish Ministers to take more responsive action if justified and necessary.
- 7.2.3.17 Additionally, the availability of these powers enables Ministers to act immediately to safeguard the life, health and wellbeing of care homes residents – provided the tests for intervening are met. The nature of the

⁵⁸The Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/201/contents/made>

pandemic means circumstances can quickly change and these powers mean Ministers are in a position to act swiftly.

- 7.2.3.18 While the virus is still present, and while there is the possibility of resurgence of the virus, it is the opinion of the Scottish Government that these powers should remain in place as they provide assurance to those who depend on care services, their families, and the staff that deliver care, that additional oversight and support is available in the rare circumstances that it may be required. The assurance these emergency powers provide is considered to be necessary and proportionate.

7.2.4 Section 2, schedule 1, Part 8: Power to purchase care home services and care at home providers

Description of Provision

- 7.2.4.1 The provisions in section 2 and paragraphs 18 to 20 of schedule 1, Part 8 set out temporary powers available to Local Authorities to purchase, by agreement, a care home or care at home services. It also sets out the powers available to Health Bodies (a Health Board, the Common Services Agency and Health Improvement Scotland) to acquire a care home, by agreement, on behalf of Scottish Ministers.
- 7.2.4.2 Circumstances where this can take place are where, for a reason relating to coronavirus: the provider is in serious financial difficulty; the Local Authority or health body is satisfied there is a threat to the life, health or wellbeing of people receiving the service; or where a provider has recently stopped providing the services.
- 7.2.4.3 These are for voluntary acquisitions only and do not grant powers for compulsory purchases.
- 7.2.4.4 Paragraph 19 also provides that the health body must comply with a written direction by Scottish Ministers.

Operation of Provision in Reporting Period

- 7.2.4.5 Paragraph 18 provides that a Local Authority may acquire, by agreement, a care home service, a care at home service and any asset or liability of those services under the circumstances outlined in paragraph 20.
- 7.2.4.6 Paragraph 19 provides that a health body (a Health Board, the Common Services Agency and Health Improvement Scotland) may acquire, by agreement, a care home service and any asset or liability of that provider on behalf of Scottish Ministers under the circumstances in paragraph 20.
- 7.2.4.7 Paragraph 19 also provides that the health body must comply with a written direction by Scottish Ministers. Directions must be published and they can be varied or revoked by a subsequent direction.

7.2.4.8 Paragraph 20 describes the circumstances in which the Local Authority can acquire the provider of a care home or care at home services (or any asset or liability of that provider) and a health body can acquire the provider of a care home service (or any asset or liability of that provider). These are set out in 7.2.4.2 above.

7.2.4.9 These powers have not been used in the reporting period. Neither a health body or a Local Authority has acquired a care home, nor has a Local Authority acquired a care at home service, under these powers. Scottish Ministers have not directed a health body to acquire a care home under these powers.

Factors Considered to Determine Use and Continued Necessity

7.2.4.10 In addition to the factors that were considered as set out at sections 7.2.3.15 to 7.2.3.17 above, the following factors were also taken into consideration in the review. The legislation builds on established powers and ensures that immediate action can be taken if continuity of care is jeopardised. These emergency provisions create powers in relation to the acquiring of care homes and care at home services. These types of transactions require detailed due diligence exercises to be carried out as well as practical discussions around matters such as budget, transition, employment considerations and property legalities. These matters require time. If action is required, the extension of these emergency provisions would also provide much clarity and benefit.

7.2.4.11 Additionally, the availability of these powers enables a Local Authority or a relevant health body to act to acquire a care home service or a care at home service in the circumstances set out in paragraph 7.2.4.2 above and enables a Local Authority or relevant health body to act to safeguard the interests of the residents of a care home. Equally, it also ensures a Local Authority can quickly put in place continuity of care for those who receive a care at home service.

7.2.4.12 While coronavirus is still present in the population and there is still the possibility of resurgence of the virus, the safety net and assurance these powers provide is still needed.

7.2.5 Section 2 schedule 1, Part 9: Care homes: further provisions

Description of Provision

7.2.5.1 Section 2, schedule 1, Part 9 - care homes: further provisions, describes two provisions, which extend on the reporting work already undertaken by the Care Inspectorate in relation to care homes for the duration of the emergency period. The provisions introduce the publication of two reports that are laid before the Scottish Parliament: a fortnightly report on inspections of adult care homes; and a weekly report on the number of deaths notified by care home

service providers. Both provisions were introduced following non-Government amendments at Stage 2 of the Bill.

Operation of Provision in Reporting Period – Reporting on Care Home Services Inspections

- 7.2.5.2 Section 53 of the Public Services Reform (Scotland) Act 2010 ('the 2010 Act') provides that the Care Inspectorate may inspect registered care services, and sets out the purpose of inspections. Section 2, schedule 1, Part 9 of the second Scottish Act adds section 53A to the 2010 Act, requiring that the Care Inspectorate must lay a report before Parliament every two weeks during the emergency period. These reports must set out which care home services it has inspected as well as the findings of those inspections.
- 7.2.5.3 This provision has been exercised from the date that the second Scottish Act came into force, with the first of the fortnightly reports being laid before Parliament on 10 June 2020. The Care Inspectorate continues to lay this report before Parliament every second Wednesday. The reports are also available on the Care Inspectorate website⁵⁹.
- 7.2.5.4 The report findings now include indicators across three themes specific to coronavirus. These new quality indicators are now augmented in the Care Inspectorate's quality framework for Care Homes for Adults and Older People, and are also now included in the fortnightly report on inspections as follows: people's health and wellbeing are supported and safeguarded during the COVID-19 pandemic, infection control practices support a safe environment for both people experiencing care, and staff, and staffing arrangements are responsive to the changing needs of people experiencing care.

Factors Considered to Determine Use and Continued Necessity

- 7.2.5.5 The power has been used in this reporting period. In implementing this provision, the Care Inspectorate has had to develop and implement new processes to comply with the requirements. There have been clear advantages in taking a more targeted, intelligence-led and risk-based approach, working collaboratively with Health and Social Care Partnerships, clinical oversight teams, public health teams and Healthcare Improvement Scotland in both sharing information to prioritise services for inspection, and in undertaking the inspections themselves.
- 7.2.5.6 Where the Care Inspectorate has identified serious concerns in services, it has returned quickly to the care home to check and report on improvements. This has provided powerful evidence of the value of robust, independent scrutiny and assurance. This process has also been helpful in getting information into the public domain more quickly to provide assurance to Ministers, Parliament and the public at a time where levels of concern about the safety and wellbeing of care home residents is understandably high. It has enabled the

⁵⁹ Reports to Scottish Parliament on Care Inspectorate inspections - <https://www.careinspectorate.com/index.php/publications-statistics/139-corporate-annual-reports-accounts/reports-to-scottish-parliament-on-care-inspectorate-inspections>

Care Inspectorate to highlight more quickly the valuable work it has been doing.

- 7.2.5.7 The reports which are provided to the Scottish Parliament present a useful overview of services inspected and their findings, providing the Care Inspectorate with the opportunity to make further enquiries if needed. The nature of reporting under the second Scottish Act requires a quick turnaround. However, the Care Inspectorate is prepared to continue with the current approach as long as is required.
- 7.2.5.8 There continues to be an increased level of interest and scrutiny of care home issues. The operation of the provision in the reporting period was proportionate, and the status of the provisions is appropriate.

Operation of Provision in Reporting Period - Reporting on Coronavirus Deaths in Care Homes

- 7.2.5.9 Section 2, schedule 1, Part 9 of the second Scottish Act inserts section 79B into the Public Services Reform (Scotland) Act 2010 ('the 2010 Act'), which introduces new duties about the reporting of deaths in care homes. Section 79A of the 2010 Act requires that care home service providers must provide certain information to the Care Inspectorate each day in relation to the numbers of deaths which have occurred in a care home service, whether caused by, or attributable to, coronavirus or not. The Care Inspectorate must prepare a report setting out this information and share it with the Scottish Ministers.
- 7.2.5.10 This provision has been exercised from the date that the second Scottish Act came into force, with the first of the weekly reports being laid before Parliament on 10 June 2020. This contained data from 25 May 2020 onwards. The Scottish Ministers continue to lay this report before the Scottish Parliament each Wednesday and information relating to this is published on the Scottish Government website⁶⁰.

Factors Considered to Determine Use and Continued Necessity

- 7.2.5.11 The power has been used in the reporting period. Most care homes have continued to notify the Care Inspectorate of deaths promptly. A positive outcome of having this specifically set out in the legislation is to remind care homes of the importance of reporting during this period. The Scottish Government and the Care Inspectorate and others have depended on accurate and timely reporting from providers.
- 7.2.5.12 National Records of Scotland (NRS) publish official statistics on deaths in Scotland, including deaths related to coronavirus in care homes. These statistics are sourced directly from death certificates and are the most accurate record of deaths.

⁶⁰Coronavirus (COVID-19): adult care homes: additional data - <https://www.gov.scot/publications/coronavirus-covid-19-additional-data-about-adult-care-homes-in-scotland/>

- 7.2.5.13 Although NRS data and Care Inspectorate management information data on deaths in care homes are similar, they differ mainly due to the location of death (i.e. some care home residents who die in hospital are also included in the statistics reported to the Care Inspectorate from care home services). There are also different time lags between the date of death and the date of registration, or date of notification to the Care Inspectorate.
- 7.2.5.14 Nevertheless, the Care Inspectorate's view is that these notifications of death will be a key element in its ongoing monitoring for any resurgence of coronavirus.
- 7.2.5.15 These provisions are designed to provide assurance to Scottish Ministers, to the Scottish Parliament, the public and health and social care workforce, that the quality of care services is being properly scrutinised and supported during the emergency period. Care homes for older people are of a particular focus during the pandemic, although the provisions are relevant to all registered care home services.
- 7.2.5.16 The operation of the provision in the reporting period to provide for the weekly reporting has offered greater transparency on the number of deaths in these settings, and coronavirus related deaths in care homes while the threat from the virus remains. The operation of the provision has been proportionate and the status is appropriate.
- 7.2.5.17 The Care Inspectorate, as the independent scrutiny and improvement body responsible for the regulation and inspection of care and support services in Scotland, is subject to the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.
- 7.2.5.18 The Care Inspectorate has published its Equality Outcomes, Mainstreaming Report and Action Plan⁶¹, setting out its approach to Equality Impact Assessments, obligations as corporate parents, and other duties.
- 7.2.5.19 The Scottish Government will continue to keep the impact of the operation of these provisions under review.

7.2.6 Section 2 and schedule 1, Part 10 - Marriage and civil partnership

Description of Provision

- 7.2.6.1 Schedule 1, Part 10, paragraph 24 requires the Scottish Ministers, in conjunction with the Registrar General of Births, Deaths and Marriages for Scotland, to take such steps as they consider necessary to ensure that the solemnisation of marriages and registration of civil partnerships continue to be

⁶¹Equality Outcomes, Mainstreaming Report and Action Plan - <https://www.careinspectorate.com/images/documents/5046/Equalities%20report%202019-21.pdf>

available in Scotland whilst paragraph 24 is in force. It specifies that the steps taken must ensure that a person's right to marry, which is protected by Article 12 of the ECHR, is not disproportionately interfered with for reasons relating to coronavirus. It also requires the Scottish Ministers to report on the steps taken and on the number of marriages and civil partnerships that have taken place.

Operation of Provision in Reporting Period

- 7.2.6.2 The Scottish Ministers and the Registrar General have taken steps to ensure that the solemnisation of marriages and the registration of civil partnerships continues to be available in Scotland during the emergency period.
- 7.2.6.3 The Scottish Government has gradually eased restrictions from March until the present, enabling more marriage ceremonies and civil partnership registrations to take place safely both indoors and outdoors with limited numbers.
- 7.2.6.4 From 15 July 2020, as at the time of the preparation of this report, the persons participating in a ceremony or registration can come from any number of households and should constitute no more than 20 people. The limit on numbers includes the couple, the two witnesses, guests, and anyone employed by the couple. It excludes any staff employed by the venue, and since 4 August 2020, it also excludes the registrar or celebrant. From 28 September 2020, as at the time of the preparation of this report, where a ceremony or registration is taking place in a private dwelling, the persons participating should include no more than six people, being the couple, the registrar or celebrant, the witnesses and, if required, an interpreter.
- 7.2.6.5 During the current reporting period, it has been necessary to put in place local advice and measures which would have impacted on some marriages and civil partnerships taking place in the specified areas. The Scottish Government published the 'Coronavirus (COVID-19): local advice and measures'⁶² which includes information for those participating in marriages and civil partnerships during periods of local restrictions.
- 7.2.6.6 The Scottish Government also published the 'Coronavirus (COVID-19): wedding ceremonies and civil partnership registrations' guidance⁶³ on its website to help people planning to get married or form a civil partnership in Scotland, those responsible for venues that may host such events, and the celebrants who conduct them. Guidance, available on the NRS website⁶⁴, has been issued by the Registrar General for those intending to get married or enter a civil partnership during the emergency period. The Registrar General

⁶² Coronavirus (COVID-19): local advice and measures -

<https://www.gov.scot/publications/coronavirus-covid-19-local-measures/pages/glasgow/>

⁶³ Coronavirus (COVID-19): wedding ceremonies and civil partnership registrations -

<https://www.gov.scot/publications/coronavirus-covid-19-guidance-for-small-marriages-and-civil-partnership-registrations/pages/purpose-of-guidance/>

⁶⁴ Getting Married or Civilly Partnered in Scotland - <https://www.nrscotland.gov.uk/registration/getting-married-in-scotland>

has also issued guidance to Local Authority registrars, and measures have been put in place in accordance with guidance to re-open some registration offices.

- 7.2.6.7 The Scottish Government engages with religious and belief bodies on the impact of the pandemic, including the impact on marriages and civil partnerships. The easing of restrictions has been of particular benefit to persons of faith. For couples for whom cohabitation before marriage is incompatible with their faith, the easing of restrictions has enabled them to marry and to begin their married life together. The easing of restrictions on access to places of worship and on the number of persons permitted to attend ceremonies has benefitted members of those religions that have a requirement or preference for ceremonies to take place indoors in a place of worship, and members of those religions that require more people to be present at a ceremony than the legal minimum of five.
- 7.2.6.8 The Scottish Government will continue to engage with key stakeholders to consider any impact of the restrictions on marriage and civil partnership on rights and equality.
- 7.2.6.9 The Scottish Government published the ‘Coronavirus (Scotland) (No.2) Act 2020: Report on Marriage and Civil partnership’⁶⁵ on 17 August 2020. The report covered the reporting period from 27 May to 31 July 2020. At the time of reporting, NRS was aware of 613 marriages having been solemnised and 7 civil partnerships having been registered in that period. Further marriages and civil partnerships may have taken place which at the time of reporting had not yet been entered on the IT system due to a delay between the occurrence of the event and the return of the schedule.
- 7.2.6.10 In due course, a further report on marriages and civil partnerships will be sent by the Scottish Ministers to Parliament. In line with schedule 1, Part 10, paragraph 24, this will provide information on the number of marriages solemnised and civil partnerships registered during the reporting period from 1 August to 30 September 2020.
- 7.2.6.11 Updated figures for the last reporting period from 27 May to 31 July 2020 will also be provided in this report.

Factors Considered to Determine Use and Continued Necessity

- 7.2.6.12 In view of the duties paragraph 24 places on the Scottish Ministers and the Registrar General, the provision continues to be necessary.

⁶⁵ Coronavirus (Scotland) (No.2) Act 2020: Report on Marriage and Civil Partnership
<https://www.gov.scot/publications/coronavirus-scotland-no-2-act-2020-report-marriage-civil-partnership/>

7.2.7 Section 3 and schedule 2, Part 1 - Criminal Justice: Fixed Penalty Notices under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020

Description of Provision

7.2.7.1. Schedule 2, Part 1, paragraph 7 amended regulation 9 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020⁶⁶ to change the age to 18. As a consequence, a police officer will only be able to issue a Fixed Penalty Notice under these regulations where the officer reasonably believes that the person is aged 18 or over.

Operation of Provision in Reporting Period

7.2.7.2. Police Scotland publishes data on the enforcement of the coronavirus legislation⁶⁷.

7.2.7.3. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 have now been revoked and replaced by The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020⁶⁸. Regulation 16 of the new regulations continues the policy that a police officer can only issue a Fixed Penalty Notice where the officer reasonably believes that the person is aged 18 or over.

Factors Considered to Determine Use and Continued Necessity

7.2.7.4. This provision amended the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. So long as these regulations remained in force and allowed Fixed Penalty Notices to be issued, it was appropriate to continue this provision in order that police officers could only issue a Fixed Penalty Notice under these regulations where the officer reasonably believed that the person was aged 18 or over.

7.2.8 Section 5 and schedule 4, Part 4 - Care services: giving of notices by the Care Inspectorate

Description of Provision

7.2.8.1 This provides the Care Inspectorate with powers to send formal notices to registered care service providers by electronic means, in addition, to normal post, for the duration of the emergency period.

⁶⁶ The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/103/contents/made>

⁶⁷ COVID-19 Police Scotland Response - <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

⁶⁸ The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/279/contents/made>

7.2.8.2 This power also enables notice to be given to a person providing, or seeking to provide, a care service and covers:

- an individual;
- a body corporate, to a director, secretary or other similar officer of that body or to a manager (or other similar officer) of the care service provided by that body, or
- a firm, to a partner of that firm.

7.2.8.3 Under normal circumstances, formal notices are issued via 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 or printing services. This provision has enabled the Care Inspectorate to issue any notice by email, or to publish more generally on a website, when required, thereby expediting the process, at a time when it is increasingly important to deliver notices in a timely, accessible and safe manner.

Operation of Provision in Reporting Period

7.2.8.4 As of 31 August 2020 this power has been used by the Care Inspectorate in relation to 911 matters for the issuing of notices relating to registration, variation of conditions of registration, and enforcement action.

7.2.8.5 This has been seen as an important legislative change from the point of view of the Care Inspectorate. During the coronavirus pandemic the Care Inspectorate offices have been closed (and remain so at the time of reporting).

7.2.8.6 For this reason, staff have not been able to access printers to enable hard copy correspondence to be issued. Nevertheless, the accessing of postal services would still have been difficult as would the giving of notice by hand delivery, which would have necessitated face-to-face contact. In the absence of this legislative change, the Care Inspectorate would have delivered formal notices by email and would have argued strongly that it did constitute effective delivery. The amendments that have been introduced put the position beyond doubt.

Factors Considered to Determine Use and Continued Necessity

7.2.8.7 The changes to the identities of individuals to whom a notice intended for a body corporate may be given, has been an essential change from the point of view of updating section 101 of the Public Service Reform (Scotland) Act 2010. This has made it fit for purpose in today's environment, regardless of coronavirus.

7.2.8.8 The Scottish Government's view is that this provision will continue to be necessary for as long as there is not as near-normal office access and similarly, as near-normal access to postal services. This will continue to be kept under review.

- 7.2.8.9 The Care Inspectorate, as the independent scrutiny and improvement body responsible for the regulation and inspection of care and support services in Scotland, is subject to the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. See additional information regarding this at section 7.2.5.17 and 7.2.5.18 above.
- 7.2.8.10 Article 8 of ECHR provides for the right to respect for private and family life. This right is also engaged in relation to private correspondence. Electronic issuing of notices under the new provision hinges on a person's willingness to receive the communication in that manner, and so is clearly compatible with the ECHR. If a person demonstrates an unwillingness to receive communications from the Care Inspectorate in this manner, then other delivery options may be pursued.
- 7.2.8.11 The impact of the operation of this provision will continue to be reviewed.

7.3 UK Act

7.3.1. Section 10 and schedule 9 - Temporary modification of mental health legislation

Description of Provision

- 7.3.1.1 The provision makes temporary changes to mental health legislation and it aims to ensure that people can continue to be treated and cared for in a way which both respects their rights, and maintains safeguards. These temporary changes will continue to be compliant with human rights obligations.

Factors Considered to Determine Use and Continued Necessity

- 7.3.1.2 The provisions have not yet commenced.
- 7.3.1.3 Mental health legislation in Scotland provides for rigorous safeguards in respect of individuals' human rights which include that any function should be carried out for the maximum benefit of the patient, with the minimum necessary restriction on the freedom of the patient. During the passage of the Bill, Ministers were clear that these temporary changes would be brought in only when absolutely necessary.
- 7.3.1.4 The temporary provisions aim to provide additional flexibility to enable services to cope with significant staff shortages whilst maintaining appropriate safeguards for patients and to help support the continued safe running of compulsory care and treatment services under mental health legislation.
- 7.3.1.5 In order for Scottish Ministers to take a view on appropriate and timely commencement of the mental health provisions, the Scottish Government

has been clear that there is an ongoing need to collate and review a range of evidence including NHS workforce information showing the overall and coronavirus-related staff absence rate across NHS Boards. In addition, the Scottish Government is working closely with the Mental Welfare Commission, the Mental Health Tribunal for Scotland, the Royal College of Psychiatrists and Social Work Scotland. The Mental Welfare Commission has a statutory duty to monitor the use of the Scottish Government's mental health legislation and it will ensure that the necessary data continues to be collected. Also, through its oversight group, the Mental Welfare Commission will be in a position to scrutinise and monitor the use of these emergency powers, if ever commenced.

- 7.3.1.6 At the most recent meeting of stakeholders, all participants reported an increasing level of demand on mental health services over recent weeks, both in terms of support services for those with poor mental wellbeing, but also on psychiatric services from people with more severe mental ill health. While services are currently coping with increasing levels of activity under mental health legislation, there was a feeling that services would be in a more vulnerable position given the potential for resurgence of the virus as it would mean the potential for staff reductions alongside increased demands on already stretched mental health services. Stakeholders also recognised that the mental health impacts of this epidemic and associated lockdown restrictions may not be fully felt or understood for some months to come. All agreed that the data and evidence of impact on services and workforce is paramount when considering whether there is a the need to commence the legislation. Therefore, it is necessary to retain these provisions overall to provide additional flexibility in the event of resurgence of the virus.
- 7.3.1.7 Mental health legislation in Scotland already provides for rigorous safeguards in respect of individuals' human rights. Consideration has been given to the potential for impacting on an individual's human rights in the event that the amendments to mental health legislation ever require to be commenced. There is a balancing exercise involved in assessing the proportionality of a measure when multiple human rights are engaged; this remains the case even during a pandemic when Article 2 (the right to life) is engaged. We acknowledge that there is a risk that the relaxing of measures required for admission, and the increase in the length of time patients can be detained could be argued to have a detrimental impact on this protected group.
- 7.3.1.8 However, these temporary changes to mental health legislation are intended to ensure that people can continue to be treated and cared for in a way which both respects their rights and maintains safeguards while ensuring that services can better cope with staff shortages. Careful consideration was given as to how this could be achieved and the temporary measures are not about making it easier to detain people, but to ensure those who are in need of detention under the Mental Health Act receive the care they need when they need it.

- 7.3.1.9 Section 3 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the '2003 Act') provides that certain persons exercising functions under the Act are required to discharge the function in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements. This section will remain in force even if the amendments are commenced.
- 7.3.1.10 The amending provisions, if commenced, would be time limited and restricted to use only when necessary. They are not replacing existing legislation and as they are permissive rather than prescriptive then they would provide flexibility about staffing and time limits. If commenced they would only be used when adhering to the current mental health legislation is not practicable or would involve undesirable delay. Should it become necessary to commence and rely on the amended provisions, there is still a prescribed procedure that must be followed when an individual is being assessed, treated and/or detained.

Evidence from stakeholders suggests that it is important to retain the temporary provisions at present

- 7.3.1.11 The Chair of the Royal College of Psychiatrists wrote to the Convenor of the Equalities and Human Rights Committee on 8 June 2020, making clear they believe that there remains a real possibility that that these workforce pressures may come to bear later in the year and therefore support the retention of the temporary provisions.
- 7.3.1.12 On 10 July 2020, the Royal College of Psychiatrists wrote to Scottish Ministers stressing their commitment to ensuring the rights of people with mental ill health are protected and that they are able to access the best care and treatment. It should also be noted that these temporary provisions, if commenced, are to be permissive rather than obligatory. They are clear that evidence is already emerging of countries being impacted by resurgence of the virus and the potential for this remains a possibility.
- 7.3.1.13 Members of the Short Life Mental Health Legislation Commencement Consideration Group gave evidence to the Equality and Human Rights Committee on 27 August 2020 and were clear that the current landscape continues to demonstrate that workload pressures are not at the stage where these temporary provisions should commence. However, the group remains strongly of the opinion that it is necessary to have these provisions available as they provide a safety net during uncertain times.
- 7.3.1.14 The Scottish Government will continue to engage with stakeholders in order to gather, analyse and review all available data and evidence. This will be used to inform and shape future advice to Scottish Ministers regarding any decision to commence these temporary measures.

7.3.2. Section 16 - Duty of Local Authority to assess needs: Scotland, and section 17 - section 16: further provision

Description of Provision

7.3.2.1 The provisions allow for relaxation of some requirements relating to social work needs assessments.

Operation of Provision in Reporting Period

7.3.2.2 Sections 16 and 17 of the UK Act allow Local Authorities to dispense with particular social care assessment duties where it would not be practical to comply with them, or to do so would cause unnecessary delay in providing community care services to any person. The provision covers social care for adults and children and support for carers. It is intended to allow Local Authorities to provide urgent care without delay.

7.3.2.3 The provisions allow Local Authorities the flexibility to focus on prioritising the most urgent need and protecting the lives of those who are most vulnerable while ensuring effective safeguards. Local Authorities are still expected to do as much as they can to meet people's needs. While the provisions relax assessment duties, the main duties on authorities under section 12 of the Social Work (Scotland) Act 1968 remain in place.

7.3.2.4 Scottish Ministers made the Coronavirus Act 2020 (Commencement No. 1) (Scotland) Regulations 2020 (SSI 2020/121)⁶⁹, which came into force on 5 April 2020. Statutory guidance⁷⁰ on these powers was issued on 3 April 2020, and the Deputy First Minister and Cabinet Secretary for Health and Sport wrote jointly to key stakeholders ahead of commencement which was on 5 April 2020. These communications made clear that these powers in respect of assessment duties would remain in operation only while absolutely necessary to protect people.

7.3.2.5 Under section 17(2)(B) of the UK Act, Scottish Ministers can direct Local Authorities to comply with any guidance which is issued under section 17(1). It is intended that this power will only be used if it is considered that the guidance requires the weight of direction, and it will not be necessary to make the direction if Local Authorities demonstrate that they are exercising their functions accordingly. As such, this direction making power has not been used in the reporting period.

7.3.2.6 Following liaison with COSLA and Social Work Scotland, the Scottish Government issued a survey to Chief Social Work Officers to identify use of the powers and the justification for this over the period from commencement of the above regulations on 5 April 2020 until 16 May 2020. Information from this survey was included in the first two-monthly report to the Scottish Parliament on use of powers under the Coronavirus Acts. A further survey was conducted covering the period 17 May to 3 July 2020 to inform the

⁶⁹ Coronavirus Act 2020 (Commencement No. 1) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/121/made>

⁷⁰ Social care assessment guidance - <https://www.gov.scot/publications/coronavirus-covid-19-changes-social-care-assessments/>

second report to Parliament. A third survey was undertaken covering use of the powers over the period 4 July to 6 September 2020. Responses to the third survey were received from all 31 Health and Social Care Partnership areas. Of these, four reported they were using the powers. The Local Authorities which said they were using the powers during the third monitoring period were: Dundee, East Renfrewshire, Highland and South Lanarkshire. These are the same Local Authorities that used the powers during the second monitoring period.

- 7.3.2.7 Reasons given for use of the powers included: to allow staff to support front line duties, to provide flexibility to enable targeting of resources on those with most needs, and to ensure people receive appropriate care promptly.
- 7.3.2.8 Local Authorities/Health and Social Care Partnerships that used the powers highlighted their importance in enabling them to effectively manage their response to coronavirus against the backdrop of significant pressures and thus enabling the provision of urgent care and support to those most in need.
- 7.3.2.9 Local Authorities using the powers were asked to explain what arrangements were in place to ensure that these powers are being used in a way that protects human rights, including the rights of children. Responses included the continued focus on Health and Social Care Standards and Social Work protocols that emphasize human rights principles; the use of risk assessment to determine when full assessments are required; and changes to practice to ensure consistency and avoid delays or an absence of creativity in responding to needs.

Factors Considered to Determine Use and Continued Necessity

- 7.3.2.10 The statutory guidance referred to above, provides a reference point and framework for Local Authorities, if they choose to implement the provisions. The statutory guidance which is referred to above states: “all assessments other than full should be regarded as temporary. These should be reviewed as well as possible at regular intervals”.
- 7.3.2.11 The guidance sets out that Local Authorities are responsible for ensuring that the powers are only used for as long as is necessary. When using these provisions, all decisions made on an individual’s social care needs should be considered alongside their individual wellbeing and fundamental human rights.
- 7.3.2.12 As was the case for the first and second reporting periods, most Local Authorities have determined that it is not operationally necessary for them to use these powers at this stage. This demonstrates that Local Authorities are carefully considering use of the powers, reviewing them, and seeking to use them only where appropriate, proportionate and necessary, and subject to their governance processes.
- 7.3.2.13 Significant progress has been made in tackling the virus and the Scottish Government wants to move as soon as possible to a position where all those in need of social care receive full assessments.

7.3.2.14 In relation to children's services, child protection activity has been monitored on a weekly basis since early in lockdown. There were peaks in child protection registrations as lockdown eased, but the number has declined fairly steadily since with corresponding de-registrations increasing. These spikes were widely expected by senior professionals as contact with vulnerable children increased after lockdown. Police Scotland child concern reports also appear to have returned to levels similar to last year.

7.3.2.15 Social Work Scotland and the Office of the Chief Social Work Adviser believe however, that there is a potential for demand in children's services to increase over the winter and that any delays in response times could leave children unprotected or families without prompt support.

7.3.2.16 The status of these provisions at the end of this reporting period, of 'commenced and still in force' is appropriate at this current time. The continued use of these provisions beyond this reporting period, specifically those relating to adult services, is being considered carefully with a view to suspension. Regulations would be required to suspend these provisions and if appropriate could be brought forward before the next two-monthly report.

7.3.3. Sections 34 and 35 - Temporary disapplication of disclosure offences: Scotland and power to reclassify certain disclosure requests: Scotland

Description of Provision

7.3.3.1 The provisions give Scottish Ministers the power to issue a direction that dis-applies or modifies the offences under section 35 (organisations not to use barred individuals for regulated work) and section 36 (personnel suppliers not to supply barred individuals for regulated work) of the Protection of Vulnerable Groups (Scotland) Act 2007 ('the PVG Act').

Factors Considered to Determine Use and Continued Necessity

7.3.3.2 This power has not been used in this reporting period. The use of these provisions is directly linked to the ability of Disclosure Scotland to continue to provide a service to those critical workers requiring PVG scheme membership. This provision is to ensure that employers that employ someone who is barred from regulated work are not criminalised due to the inability of Disclosure Scotland to provide this check in a timely manner.

7.3.3.3 Disclosure Scotland's Leadership Team monitors the number of applications received on a daily basis, and the length of time that it is taking to process and issue disclosures. Throughout the reporting period, the vast majority of disclosures have been issued within one week of the application being received. Disclosure Scotland's Leadership Team also monitors staff absences daily, and these have not been at a level to impact adversely on the processing and issuing of disclosures. Scottish Ministers will make the

decision to invoke this contingency if monitoring shows that there is a material risk of Disclosure Scotland being unable to continue to provide a service to critical workers requiring PVG scheme membership.

- 7.3.3.4 While at this time, the assessment is that the powers under sections 34 and 35 do not require to be used, the provision remains necessary overall as a contingency to ensure continuity of service.
- 7.3.3.5 The provisions are not considered to engage any children's rights, human rights or equality considerations. While the disclosure and barring services operated under the PVG Act can impact on both Article 6 and Article 8 rights, sections 34 and 35 do not change the type or extent of information that may be disclosed about a person's criminal past, nor do they affect Ministers' ability to place an individual under consideration for listing to prevent them from working with vulnerable groups. They do not undermine safeguarding, since it would continue to be an offence for a barred individual to do regulated work with children and/or protected adults.

7.3.4. Section 37 and Part 2 of schedule 16 and section 38 and Part 2 of schedule 17 - Temporary closure of educational institutions and childcare premises, and temporary continuity: education, training and childcare

Description of Provision

- 7.3.4.1 The provisions provide Scottish Ministers with powers to direct the closure of educational establishments where it is necessary and proportionate, or give directions relating to the continuity of education, which may include directing the operator of an education establishment to take on additional functions, to close educational establishments, or reopen either partially or fully. Both types of direction include powers to provide that any failure to comply with a statutory duty or time limit is to be disregarded to the extent the failure is attributable to the direction; a closure direction had such effects automatically.

Operation of Provision in Reporting Period

- 7.3.4.2 The powers under section 37 and Part 2 of schedule 16 have not been used in the reporting period.
- 7.3.4.3 The powers under section 38 and Part 2 of schedule 17 have been used in this reporting period up to 30 August 2020. Scottish Ministers exercised their powers conferred by section 38(2) and paragraph 11(1) of schedule 17 of the UK Act, to give Educational Continuity Directions⁷¹ to education authorities. The first such direction was given with effect from 21 May 2020 and was reviewed and renewed on a 21 day cycle. The most recent

⁷¹ Coronavirus Act 2020: educational continuity direction - <https://www.gov.scot/publications/coronavirus-act-2020-educational-continuity-direction/>

direction was given with effect from 10 August 2020 and expired on 30 August 2020. As required by the legislation, Scottish Ministers had regard to advice relating to coronavirus from the Chief Medical Officer ahead of the Educational Continuity Direction being issued, and they have been satisfied that giving each direction was necessary and proportionate in response to the pandemic.

7.3.4.4 The ‘Coronavirus Act 2020: educational continuity direction’⁷² continued to support and provide a legal basis for key measures of the ‘Strategic Framework for Reopening of Schools and Early Learning and Childcare Provision’⁷³ and the more recent guidance on preparing for the start of the new school term in August 2020⁷⁴. For example, it included requirements on education authorities to reopen schools under their management for the provision of education to pupils from 11 August 2020 and ensure that all schools under their management were open to pupils for the provision of education no later than 18 August 2020. It also required each education authority to prepare contingency plans which can be used immediately in the event of a local coronavirus outbreak. Over the course of the reporting period the Educational Continuity Direction power has not been exercised in relation to early learning and childcare settings or Further Education or Higher Education institutions.

Factors Considered to Determine Use and Continued Necessity

7.3.4.5 The most recent continuity direction expired on 30 August 2020. It was not considered necessary or proportionate to give a further direction. However, due to the continuing uncertainties of the development of this pandemic, the provisions for educational closure directions and educational continuity directions remain necessary to allow Scottish Ministers to respond swiftly to the current public health emergency as it evolves, for example any future resurgence of the virus which may necessitate closures of educational establishments. The situation will be kept under review in line with the key discussions had by the Education Recovery Group, however, at this stage it is not anticipated that further directions will be given.

7.3.4.6 The Education Recovery Group provided the broad based overview of the effect of the direction. An initial impact assessment of the Strategic Framework was published on 21 May 2020⁷⁵, and full impact assessments in relation to protected characteristics, children’s rights and wellbeing, the Fairer Scotland Duty and island communities were subsequently completed

⁷² Coronavirus Act 2020: educational continuity direction -

<https://www.gov.scot/publications/coronavirus-act-2020-educational-continuity-direction/>

⁷³ Coronavirus (COVID-19): strategic framework for reopening schools, early learning and childcare provision <https://www.gov.scot/publications/excellent-equity-during-covid-19-pandemic-strategic-framework-reopening-schools-early-learning-childcare-provision-scotland/>

⁷⁴ Coronavirus (COVID-19): guidance on preparing for the start of the new school term in August 2020 - version 2 <https://www.gov.scot/publications/coronavirus-covid-19-guidance-preparing-start-new-school-term-august-2020-version-2/>

⁷⁵ Coronavirus (COVID-19): strategic framework for reopening schools, early learning and childcare provision - <https://www.gov.scot/publications/excellent-equity-during-covid-19-pandemic-strategic-framework-reopening-schools-early-learning-childcare-provision-scotland/>

in collaboration with human rights organisations and key stakeholders. The Impact Assessment for ‘The closure and reopening of schools as part of the COVID-19 recovery process in Scotland’ was published on 30 July 2020⁷⁶ alongside the updated guidance for reopening schools which reflected the Government’s updated position on being able to open schools full-time from August. It has since been updated to reflect the Scottish Government’s updated position on face coverings in schools.

7.3.5. Section 49 and schedule 19 - Health Protection Regulations: Scotland

Description of Provision

- 7.3.5.1 Section 49 introduces schedule 19, which gives Scottish Ministers the powers to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland.

Operation of Provision in Reporting Period

- 7.3.5.2 Section 49 commenced on Royal Assent and schedule 19 came into force on 25 March 2020. The powers have been used to make several sets of regulations to provide for the “lockdown”. The chronology of this is as follows:

- **25 March 2020:** The UK Act receives Royal Assent and section 49 and schedule 19 of the Act (the enabling powers for the regulations) come into force. Coronavirus (COVID-19): Business and Social Distancing Guidance⁷⁷ is also published.
- **26 March 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020/103)⁷⁸ are made and come into force.
- **27 March 2020:** Physical Distancing Guidance Staying at Home and Away from Others⁷⁹ is published.

⁷⁶ Children’s rights and wellbeing impact assessment: The closure and reopening of schools as part of the COVID-19 recovery process in Scotland - <https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessment-closure-reopening-schools-part-covid-19-recovery-process-scotland/>

⁷⁷ Working Safely During Coronavirus Guidance - <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

⁷⁸ The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/103/contents/made>

⁷⁹ Physical Distancing Guidance Staying at Home and Away from Others - <https://www.gov.scot/publications/coronavirus-covid-19-staying-at-home-and-away-from-others/pages/staying-at-home/>

- **1 April 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations 2020 (SSI 2020/106)⁸⁰ are made and come into force. These regulations make minor amendments to regulations 4 and 7 of the original regulations to amend cross referencing errors.
- **16 April 2020:** The regulations are reviewed. The Cabinet Secretary for Constitution, Europe and External Affairs wrote to inform the Scottish Parliament of this.
- **21 April 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 2) Regulations 2020 (SSI 2020/126)⁸¹ are made and come into force. These regulations strengthen the position already set out in guidance by making it a legal requirement that all businesses that are open during the emergency period must take reasonable steps to ensure that their employees are able to maintain social distancing. They also make minor extensions and clarifications to the regulations in relation to livestock markets, holiday accommodation services and burial grounds.
- **7 May 2020:** The regulations are reviewed.
- **11 May 2020:** The Physical Distancing Guidance which is referred to above is updated to reflect that people are advised they can exercise as often as they wish. Scottish Ministers made this change following scientific advice and using the COVID-19 Decision-Making Framework⁸². This change will be monitored carefully and reviewed in order to assess the effects on physical distancing and infection spread.
- **28 May 2020:** The principal regulations are reviewed and the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/164)⁸³ are made. These regulations provide that people may take part in outdoor recreation with members of their household and with members of one other household. They allow garden centres to reopen and provide that it is a reasonable excuse to leave your home to obtain supplies from garden centres (or any other business or service listed in Part 3 of schedule 1) or to access waste/recycling services. The regulations provide for the reopening of outdoor tennis courts and bowling greens. They allow businesses and service providers, currently closed to the public under the regulations, to begin preparing social distancing procedures in readiness for when they are allowed to reopen. They make a number of technical amendments

⁸⁰ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations 2020
<https://www.legislation.gov.uk/ssi/2020/106/contents/made>

⁸¹ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 2) Regulations 2020
<http://www.legislation.gov.uk/ssi/2020/126/made>

⁸² Coronavirus (COVID-19): framework for decision making -
<https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making/>

⁸³ Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020 -
<http://www.legislation.gov.uk/ssi/2020/164/contents/made>

with the effect that the termination of a restriction or requirement imposed by the principal regulations must be by way of an amending instrument, rather than by direction. The regulations came into force on 29 May 2020.

- **18 June 2020:** The regulations are reviewed. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/182)⁸⁴ are made. The regulations allow people to meet outside with their own household and with people from up to two other households. They enable people to attend places of worship for individual prayer and contemplation. They allow accommodation providers to accommodate people travelling for work. They introduce a new requirement to wear a face covering when using a passenger transport service or passenger transport service premises. They enable a person who lives alone, or who is a single parent with children under the age of 18 to form an “extended household” with one other household. The Scottish Government’s guidance is updated to reflect these changes and to make other changes for the purpose of implementing proposals in the Route Map.
- **26 June 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/190)⁸⁵ are made. They provide that, in relation to a civil partnership or marriage, an approved celebrant, authorised registrar and any interpreter will not be counted as one of the three households that may take part in the gathering. They enable people to undertake certain activities in relation to the purchase, sale, letting or rental of a residential property and to attend a property for maintenance. The regulations allow certain businesses, that were required to be closed, to reopen. The regulations also enable college and university libraries to reopen to staff and students in certain circumstances. Scottish Government guidance is also updated.
- **2 July 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/199)⁸⁶ are made. They provide that businesses can sell food and drink to people for consumption on outdoor parts of their premises (with physical distancing). The regulations also provide that accommodation providers may now provide self-catering accommodation in certain circumstances. People who own properties other than where they are living now have a reasonable excuse to visit the property.
- **9 July 2020:** Following the review required by 9 July 2020, Scottish Ministers decided to progress to phase three of the Route Map. The

⁸⁴ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 4) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/182/contents>

⁸⁵ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 5) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/190/contents>

⁸⁶ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 6) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/199/contents>

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/210)⁸⁷ are made. They reduce the physical distancing limit to one metre for businesses or services that meet the definition of a passenger transport service premises or a shop. They revoke the offence of leaving one's home without a reasonable excuse. These regulations also provide that an outdoor gathering may now consist of five households and an indoor gathering may consist of three households and allows gatherings for the purpose of supervised outdoor recreation for people who are under 18 years of age. They allow two households to form an extended household. The regulations create a new offence, requiring people to wear a face covering when inside a shop and provide exceptions and reasonable excuses for failing to meet this duty. Scottish Government guidance is updated.

- **14 July 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 8) Regulations 2020 (SSI 2020/211)⁸⁸ are made. They provide that businesses may serve food and drink for consumption indoors. The regulations also provide that libraries and holiday accommodation providers that could only open in certain circumstances, may now fully reopen. They also provide that places of worship may now be reopen and ease restrictions on gatherings to attend a place of worship. The regulations provide that a number of other businesses and services that were previously required to be closed, such as museums, galleries, cinemas and hair salons and barbers can reopen on 15 July, while beauty parlours, tattoo and piercing parlours and spas, may reopen on 22 July. The regulations also ease the restrictions on gatherings at funerals, marriage ceremonies and civil partnership registrations or where the gathering is for the purpose of childcare. Scottish Government guidance is updated.
- **30 July 2020:** The regulations are reviewed. The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendments (No.9) Regulations 2020 (SSI 2020/232)⁸⁹ are made. They provide that schools are exempt from two meter physical distancing, that cinemas must follow two meter distancing, and that community centres can reopen.
- **7 August 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendments (No.10) Regulations 2020 (SSI 2020/236)⁹⁰ are made. They introduced changes to face coverings, to extend the settings in which they are required, to exclude face shields from the definition of a face covering, and to require those responsible for certain premises to take measures to minimise risk of exposure to coronavirus.

⁸⁷ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 7) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/210/contents>

⁸⁸ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 8) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/211/contents>

⁸⁹ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 9) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/232/contents>

⁹⁰ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 10) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/236/contents>

- **13 August 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendments (No.11) Regulations 2020 (SSI 2020/241)⁹¹ are made. They amend the principal regulations with the effect that a person responsible for hospitality premises is required to collect information about visitors to those premises.
- **21 August 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendments (No.12) Regulations 2020 (SSI 2020/251)⁹² are made. They set out that gathering for the purposes of an organised outdoor activity is exempt from the public gathering restrictions. The regulations allow preparatory work, including rehearsals, to recommence in theatres and concert halls ahead of their full reopening later in the Route Map and revoke the requirement for bingo halls, amusement arcades, casinos, bowling alleys, pool/snooker halls and funfairs to close. The regulations also require face coverings to be worn in bingo halls, amusement arcades, casinos, bowling alleys and indoor funfairs.
- **27 August 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendments (No.13) Regulations 2020 (SSI 2020/261)⁹³ are made. They provide the police with powers to take action in cases of house parties of 16 or more people from more than one household. They also amend the list of exceptions to the restriction on gatherings in public place to allow a gathering to take place where it is for the purpose of organised exercise and certain other organised activities. The regulations permit indoor fitness studios, gyms, swimming pools or other indoor leisure centres, including skating rinks to reopen. They also require the wearing of face coverings in the sport and exercise related venues which are now reopening and sets out that a face covering does not need to be worn for the purpose of exercise.
- **28 August 2020:** The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (SSI 2020/262)⁹⁴ come into force. These new regulations make provision for a Local Authority to give directions relating to specified premises, events and public outdoor places in its area. A direction may only be given if the Local Authority considers that the necessity and proportionality conditions set out in the regulations are met. The Local Authority must review the direction at least once every seven days and it must be revoked, or revoked and replaced when it is determined on review that the requirements of necessity and proportionality are no longer met.

⁹¹ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 11) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/241/contents>

⁹² The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 12) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/251/contents>

⁹³ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 13) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/261/contents>

⁹⁴ The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/262/made>

- **11 September 2020:** The regulations are reviewed. As the measures are still deemed necessary, the regulations are revoked and replaced with a new instrument due to the impending expiry date of 26 September 2020. The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 (SSI 2020/279)⁹⁵ are made. They provide that the regulations remain in place until 31 March 2021. They also adjust the restriction on parties in private dwellings to ensure student accommodation is appropriately covered by the existing restrictions, introduce new restrictions on public and private gatherings, setting out that gatherings made up of more than six people from more than two households are restricted, with the exception of some limited circumstances. The regulations adjust the previous provisions relating to the face coverings to ensure that customers and staff are required to wear face coverings, in certain circumstances, when within a hospitality venue and ensure marriage and civil partnership receptions and funeral wakes are no longer restricted by the gathering limit (now six people from two households) so can take place with slightly larger numbers.
- **24 September 2020:** The regulations are reviewed. The current measures are still deemed necessary and some further restrictions are required. The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Amendment Regulations 2020 are made. They require certain hospitality premises to close between 10pm and 5am and to only sell food or drink for consumption on those premises if customers consume the food and drink while sitting at a table. They also adjust the restrictions on gatherings.

7.3.5.3 The Physical Distancing Guidance has been updated at various points to accompany the measures set out in the updated regulations, and to give further details on additional recommended measures. A refreshed guidance note, focussing on the key measures and changes in each phase of the Route Map, has been published at the start of phase two and phase three. The Scottish Government has published supporting evidence that has informed the decisions for moving through the Route Map. The most recent supporting evidence for the move to phase three was published on 14 July 2020⁹⁶.

7.3.5.4 Police Scotland is publishing weekly updates on the use of coronavirus legislation, including the number of Fixed Penalty Notices issued and other intervention activity⁹⁷. This information is drawn from Police Scotland's 'Coronavirus Interventions' application, which relies on manual input from

⁹⁵ The Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/279/contents>

⁹⁶ Coronavirus (COVID-19): Scotland's route map - supporting evidence for moving to Phase 3 - <https://www.gov.scot/publications/covid-19-framework-decision-making-scotlands-route-map-through-out-crisis-supporting-evidence-moving-phase-3/>

⁹⁷ Police Scotland weekly updates on the use of the coronavirus legislation - <https://www.scotland.police.uk/about-us/covid-19-police-scotland-response/enforcement-and-response-data/>

police officers. Due to this manual input, these figures are indicative only and should not be considered Official Police Statistics. This system currently provides the broadest picture of the differing levels of co-operation experienced by police across Scotland.

- 7.3.5.5 In due course and as standard practice, the Official Statistics produced by the Scottish Government on Recorded Crime⁹⁸ and Criminal Proceedings⁹⁹ will ultimately provide users with information on both the number of crimes recorded in relation to the new powers, and the number of Fixed Penalty Notices issued. Further updates on developments with these Official Statistics can be received by signing up to the SCOTSTAT network¹⁰⁰.
- 7.3.5.6 Information is now available on charges reported to COPFS under the Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020. Most charges were related to regulation 8(1), for failure to comply with Coronavirus Regulations.
- 7.3.5.7 Table Three below provides additional information on the number of charges reported up to 31 August 2020 and the initial decision on how these charges will proceed.

Table Three: Action taken as a result of charges reported to COPFS under the Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 – up to 31 August 2020

Action taken	Number of charges reported	% of total
Solemn	59	10%
Summary	214	36%
Fiscal Fine	91	
Reporter	25	
Warning/Diversion	15	
Direct Measure Total	131	22%
No Action/Not Separately Actioned Total	86	15%
No Decision Total	101	17%
Overall Total	591 ¹⁰¹	100%

Source: COPFS

⁹⁸ Recorded Crime in Scotland, 2018-19 National Statistics -

<https://www.gov.scot/publications/recorded-crime-scotland-2018-19/>

⁹⁹ Criminal Proceedings in Scotland, 2018-19 National Statistics -

<https://www.gov.scot/publications/criminal-proceedings-scotland-2018-19/>

¹⁰⁰ SCOTSTAT network for users and providers of Scottish Official Statistics -

<https://www2.gov.scot/Topics/Statistics/scotstat>

¹⁰¹ Please note- the data includes a small number (7 in total) of quarantine related charges under the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020.

7.3.5.8 The table above covers the full period of the regulations being in force. A monthly breakdown of charges reported by date of offence is provided below.

Table Four: Charges reported to COPFS under the Health Protection (Coronavirus)(Restrictions)(Scotland) Regulations 2020 by date of offence – up to 31 August 2020

Month	March	April	May	June	July	August	Total
Total charges reported	32	319	185	35	13	7	591

Source: COPFS

7.3.5.9 This demonstrates that there has been a decline in charges under the regulations, with only 7 of the 591 charges reported since the regulations were introduced relating to offences committed in August (however, the figure for August may increase slightly as some offences committed in August may be reported to COPFS in September or later).

7.3.5.10 A Local Authority can also use enforcement powers in relation to the parts of the regulations (regulations 4, 5 and 6 of the principal regulations) that relate to restrictions on businesses.

7.3.5.11 To ensure a co-ordinated approach to coronavirus was taken nationally, the Environmental Health/Trading Standards COVID-19 Expert Group was formed by the Society of Chief Officers of Environmental Health of Scotland and the Society of Chief Officers of Trading Standards in Scotland in conjunction with COSLA. Both Environmental Health and Trading Standards staff have been designated as authorised officers by Local Authorities to enforce the relevant requirements of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020/103), as amended.

7.3.5.12 Each Local Authority is publishing information about enforcement activity undertaken in relation to the regulations on the respective Local Authority's website. This information is currently published every two weeks.

Factors Considered to Determine Use and Continued Necessity

7.3.5.13 Prior to the regulations being made, confirmation was sought from the Chief Medical Officer that the measures set out in the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 were required due to the serious and imminent threat to public health posed by the incidence and spread of the coronavirus.

7.3.5.14 Scottish Ministers also had to ensure that the restrictions and requirements that they imposed were proportionate to what is sought to be achieved by the imposition of the regulations. Advice that the regulations should continue to remain in force was sought, and provided, ahead of each review of the

regulations. This was provided by a range of analytical and health teams across the Scottish Government. Advice on the impact on public health of any changes to the regulations to relax the measures was sought before each change was implemented in the regulations.

- 7.3.5.15 The necessity of the restrictions and requirements imposed by the regulations must be reviewed at least every 21 days, and measures must be terminated as soon as they are no longer required.
- 7.3.5.16 In practice, this means that at least every 21 days, the full range of measures are formally reviewed based on whether they are needed on public health grounds, and the results of the review are communicated to the Scottish Parliament. In between these formal reviews, the individual measures are kept under continuous review and changes are assessed based on public health grounds and the threat to public health that is posed by coronavirus and whether the restrictions and prohibitions imposed by the regulations remain proportionate to what the regulations seek to achieve. Where measures can be eased, they are being eased as soon as the evidence suggests this. These changes are being announced by the Scottish Government, and announced to the Scottish Parliament, as and when they are made.
- 7.3.5.17 Throughout the development of the regulations and guidance, the Scottish Government has always had regard to equality considerations and the particular needs of island communities as part of the policy development process. Ministers were clear that the regulations and the restrictions and requirements that they impose were necessary.
- 7.3.5.18 Whilst these measures were brought in to deal with a significant threat to public health, impact assessments will be carried out as required on these measures. Any proposed changes to the measures are being assessed for their impact on equality and other areas as part of the policy development. This will be reported to the Scottish Parliament in appropriate impact assessments supporting any further amending regulations. An Equality Impact Assessment has been carried out for each of the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations No.2 to most recently No.13. The new Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020 have also been assessed and an Equality Impact Assessment has been carried out. All impact assessments can be found on www.legislation.gov.uk under the appropriate instrument. In addition, an Equality Impact Assessment¹⁰² has been published as part of the evidence gathered for the Route Map.

7.3.6. Section 51 and Part 3 of schedule 21 - Powers relating to potentially infectious persons

¹⁰² Coronavirus (COVID-19): evidence gathered for Scotland's route map - equality and Fairer Scotland impact assessment - <https://www.gov.scot/publications/equality-fairer-scotland-impact-assessment-evidence-gathered-scotlands-route-map-through-out-crisis/>

Description of Provision

- 7.3.6.1 Section 51 introduces schedule 21 which sets out powers which can be exercised by public health officers, constables and immigration officers in respect of persons where there are reasonable grounds to suspect that they are “potentially infectious”.

Operation of Provision in Reporting Period

- 7.3.6.2 A declaration of a serious and imminent threat to public health¹⁰³ was made on 25 March 2020 under schedule 21, and a further clarificatory declaration¹⁰⁴ was made on 30 March 2020. Although the schedule 21 powers have been “switched on” via this declaration made by Scottish Ministers, they have not been used in the reporting period. The views and agreement of the Chief Medical Officer were formally sought and secured prior to the issuing of the declaration to switch on the schedule 21 powers.

Factors Considered to Determine Use and Continued Necessity

- 7.3.6.3 The schedule 21 potentially infectious persons powers continue to be required. The easing of lockdown provisions introduce a risk of potential, localised outbreaks of coronavirus. The Test and Protect programme aims to identify those at risk of exposure in order to test for coronavirus and require self-isolation. Where individuals do not co-operate on a voluntary basis it may be necessary to use the powers under schedule 21 for their own and others’ health and wellbeing.
- 7.3.6.4 In respect of the provisions in schedule 21, for example relating to isolation and medical screening and assessment, the requirements of ECHR were carefully considered when the Act was developed. When powers under schedule 21 are exercised, they must be exercised in a manner which strikes an appropriate balance between individuals’ rights and the public health interest. To ensure this, a number of safeguards are built into the provisions, including the pre-requisite for the use of powers being a Ministerial declaration of a “serious and imminent risk to public health”; the requirement for the person exercising powers under the schedule to have reasonable grounds to believe that the person they are dealing with is potentially infectious; and appeal rights for those subject to restrictions.

7.3.7. Section 52 and Part 3 of schedule 22 - Powers to issue directions in relation to events, gatherings and premises

¹⁰³Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health: <https://www.gov.scot/publications/covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health/>

¹⁰⁴ Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health (supplementary): <https://www.gov.scot/publications/coronavirus-covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health-supplementary/>

Description of Provision

7.3.7.1 Section 52 introduces schedule 22 which gives the Scottish Ministers direction-making powers in relation to events, gatherings and premises.

Operation of Provision in Reporting Period

7.3.7.2 A declaration of serious and imminent threat to public health¹⁰⁵ was made on 25 March 2020 under schedule 22. This had the effect of starting a “public health response period” and switching on the schedule 22 powers (with a further clarificatory declaration¹⁰⁶ made on 30 March 2020).

7.3.7.3 The views and agreement of the Chief Medical Officer were formally sought and secured prior to the issuing of the declaration to switch on the schedule 22 powers.

7.3.7.4 Although the schedule 22 powers have been “switched on” via the declaration made by Scottish Ministers, they have not yet been used to make directions relating to events, gatherings and premises. Provision in that regard has instead been made to date by regulations made under schedule 19. Provision has also been made through regulations¹⁰⁷ made under the section 49, schedule 19 powers, to allow Local Authorities to give directions relating to specified premises, events and public outdoor places in their area.

Factors Considered to Determine Use and Continued Necessity

7.3.7.5 As the requirement for the schedule 19 regulations is kept under review, based on public health grounds, so too is the ongoing requirement for the schedule 22 powers and when they might be invoked. Whilst no directions have been made under schedule 22 yet, the powers remain necessary and could be used to take fast targeted action beyond the scope of the regulations if it appeared necessary, proportionate and justified in the circumstances. As part of exiting lockdown, the powers may be necessary to allow Scottish Ministers to take more targeted action in local areas to close specific premises where there is a serious outbreak (where premises of that type are not closed by the schedule 19 regulations), or where Ministers consider action needs to be taken quickly and premises have not yet been closed by a Local Authority or where Local Authority powers are not appropriate - for example, where there is an outbreak spanning a number of Local Authorities but not all of Scotland.

¹⁰⁵Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health: <https://www.gov.scot/publications/covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health/>

¹⁰⁶ Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health (supplementary): <https://www.gov.scot/publications/coronavirus-covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health-supplementary/>

¹⁰⁷ The Health Protection (Coronavirus, Restrictions)(Directions By Local Authorities)(Scotland) Regulations 2020: <https://www.legislation.gov.uk/ssi/2020/262/contents/made>

7.3.7.6 When powers are exercised under schedule 22, they must be exercised in a manner which strikes an appropriate balance between individuals' rights and the public health interest. Safeguards are built into the provisions, for example, the pre-requisite for the use of powers being a Ministerial declaration of a "serious and imminent risk to public health". Decisions on issuing directions under schedule 22 will be taken in the interests of the protection of public health, will be made on the basis of medical and scientific advice, and will be proportionate to the management of risks to public health of coronavirus.

8. Coronavirus-related Scottish Statutory Instruments

8.1. Section 14 of the second Scottish Act requires Scottish Ministers to report on all SSIs made by Scottish Ministers where the primary purposes relate to coronavirus. This does not apply to SSIs made by Scottish Ministers under the first or second Scottish Acts or the UK Act, as SSIs made under these Acts are already being reported on. Information on SSIs, to which section 14 of the second Scottish Act applies, is included in Table Five below.

Table Five – SSIs to which section 14 of the second Scottish Act applies

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2020 SSI 2020/017	Sections 98 and 105 of the National Health Service (Scotland) Act 1978	Negative	This instrument ensures that certain NHS services for any overseas visitor who requires diagnosis or treatment for coronavirus are provided without charge to that overseas visitor.	30/01/2020	Open-ended	In force No change to status since last reporting period
The Public Health etc. (Scotland) Act 2008 (Notifiable Disease and	Section 12(2) of the Public Health etc. (Scotland) Act 2008	Negative	Makes SARS-CoV-2 a notifiable virus and COVID-19 a notifiable disease.	22/02/2020	Open-ended	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Notifiable Organisms) Amendment Regulations 2020 SSI 2020/051						
The Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 SSI 2020/101	Section 153 of the Local Government etc. (Scotland) Act 1994	Negative	Introduces two reliefs in relation to Non-Domestic Rates in the financial year beginning on 01/04/2020, and makes consequential amendments to other regulations that provide a relief from liability to pay rates.	01/04/2020	31/03/2021	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Council Tax Reduction (Scotland) (Amendment) (No.3) (Coronavirus) Regulations 2020 SSI 2020/108	Sections 80 and 113(1) and paragraph 1 of schedule 2 of the Local Government Finance Act 1992	Negative	The purpose of these regulations is to increase the additional earnings disregard from £17.10 to £37.10. The regulation takes effect on 06/04/2020 and ceases to have effect at the end of 04/04/2021.	06/04/2020	04/04/2021	In force No change to status since last reporting period
The Carer's Allowance (Coronavirus) (Breaks in Care)(Scotland) Regulations 2020 SSI 2020/117	Sections 70(8) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992	Negative	Relaxes the rules on breaks in caring so that COVID-19 safe caring still counts as care for the purposes of eligibility.	03/04/2020	8 months from 03/04/2020	In force No change to status since last reporting period
The Single Use Carrier Bag Charge (Scotland) Amendment	Sections 88 and 96(2) of the Climate Change (Scotland) Act 2009	Affirmative	Waives the carrier bag fee in certain circumstances, such as bags being used to deliver groceries	02/04/2020	Has effect until 00:01 on 03/10/2020	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Regulations 2020 SSI 2020/118			from a supermarket, for collections and for takeaways.			
The Prisoner and Young Offenders Institutions (Scotland) Amendment Rules 2020 SSI 2020/122	Section 39 of the Prisons (Scotland) Act 1989	Negative	The amendments provide Governors with flexibility in regards to compliance with timescales and the provision of services detailed in Prison Rules.	07/04/2020	31/03/2021	Partially in force SSI 2020/264 amended some of the provision made by this SSI to extend the period of time for which these amendments have effect to 31/03/2021
The Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus)	Section 2(2) of the European Communities Act 1972, sections	Negative	Suspends requirements for applicants to provide access to certain information	24/04/2020	Ending on the date on which Part 1 of the first	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
(Scotland) Regulations 2020 SSI 2020/123	36(8), 36C(2), 60(2) and (3) and paragraph 1(3) of schedule 8 of the Electricity Act 1989		at a physical location.		Scottish Act expires	
The Town and Country Planning (Miscellaneous Temporary Modifications)(Coronavirus)(Scotland) Regulations 2020 SSI 2020/124	Section 2(2) of the European Communities Act 1972, sections 35B(5), 40, 43A(10) and (11) and 275 of the Town and Country Planning (Scotland) Act 199	Negative	Suspends requirements for certain public events and meetings for applicants to provide access to certain information at a physical location.	24/04/2020	Ending on the date on which Part 1 of the first Scottish Act expires	In force No change to status since last reporting period
The Education (Misc. Amendments)(Coronavirus)(Scotland)	sections 28A(5) and 28D(3) of the Education (Scotland)	Negative	Extends timeframes for admissions related appeals and gives greater flexibility in	23/04/2020	Open-ended	In force No change to status since

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Regulations 2020 SSI 2020/128	Act 1980 and section 22 of, and paragraphs 4(3) and 6(6) of schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004		how appeals can be conducted.			last reporting period
The Town and Country Planning (General Permitted Development) (Scotland) (Coronavirus) Amendment Order 2020 SSI 2020/129	sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997	Negative	Allows Local Authorities to carry out development for emergency purposes.	24/04/2020	31/12/2020	In force No change to status since last reporting period
The Children and Young	Section 48(2) of the	Affirmative	This instrument revokes the	30/04/2020	Open-ended	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
People (Scotland) Act 2014 (Modification) (No.2) Revocation Order 2020 SSI 2020/136	Children and Young People (Scotland) Act 2014		increase of the mandatory amount of early learning and childcare from 600 hours to 1140 hours each year.			No change to status since last reporting period
The Homeless Persons (Unsuitable Accommodation)(Scotland) Amendment Order 2020 SSI 2020/139	Section 29(3) and (4) of the Housing (Scotland) Act 1987	Negative	Extends the 2014 Unsuitable Accommodation Order to all homeless households.	05/05/2020	Open-ended except for Article 3 which expired on 30/09/2020	In force - with exception of Article 3 which expired 30/09/20 No change to status since last reporting period
The Education (Deemed Decisions) (Coronavirus) (Scotland) Amendment	Sections 28D(3)(b) and 28H(5)(b) of the Education	Negative	Amends regulations that relate to an appeal against the decision of an education authority	15/05/2020	Open-ended	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Regulations 2020 SSI 2020/149	(Scotland) Act 1980		to exclude a pupil from school, by amending the time period after which failure of the education authority to hold an appeal committee hearing becomes a deemed decision from one month to four months.			
The Adults with Incapacity (Ethics Committee)(Coronavirus)(Scotland Amendment Regulations 2020 SSI 2020/151	Section 51(6) of the Adults with Incapacity (Scotland) Act 2000	Negative	To improve capacity within, and allow some flexibilities in, working practice of the committee as a result of urgency of COVID research and the subsequent amendments required to trials involving adults with incapacity in Scotland, as	21/05/2020	Open-ended	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
			research continues and is finessed beyond the pandemic stage when clinician members may be required to absent themselves due to clinical duties.			
The Marine Works & Marine Licensing (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 SSI 2020/157	Section 2(2) of the European Communities Act 1972, sections 23(3)(d), (4) and (5), 24(2) and 165(1) of the Marine (Scotland) Act 2010	Negative	Replaces requirements for certain public consultation events with online events and suspends requirements for applicants to provide access to certain information at a physical location.	21/05/2020	Ending on the date on which Part 1 of the first Scottish Act expires	In force No change to status since last reporting period
The Police Act 1997 and Protection of Vulnerable Groups	Sections 112(1)(b), 113A(1)(b), 113B(1)(b), 114(1)(b) and	Negative	Qualifying sectors recruiting staff solely to respond to pandemic do not	26/06/2020	25/12/2020	In force No change to status since

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
(Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020 SSI 2020/163	116(1)(b) of the Police Act 1997 and sections 70(1) and (2) of the Protection of Vulnerable Groups (Scotland) Act 2007		pay usual fee for a disclosure check.			last reporting period
The Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 SSI 2020/169	Section 94(1)(b)(i) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	Introduces a requirement on international traveller arrivals into Scotland to provide data on their journey and contact details, and a requirement to self-isolate for 14 days after arrival, subject to a limited number of sectoral exemptions.	08/06/2020	12 months	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Health Protection (Coronavirus) (Public Health Information for Travellers to Scotland) (Scotland) Regulations 2020 SSI 2020/170	Section 94(1)(b)(i) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	Requires commercial carriers to provide information to travellers on applicable public health requirements in Scotland including the need to provide contact information and to self-isolate.	08/06/2020	12 months	In force No change to status since last reporting period
The Health Protection (Coronavirus)(International Travel) (Scotland) Amendment Regulations 2020 SSI 2020/171	Section 94(1)(b)(i) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	Amendments on penalty provisions.	08/06/2020	12 months	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Land Reform (Scotland) Act 2016 (Supplementary Provision) (Coronavirus) Regulations 2020 SSI 2020/174	Section 127(1) of the Land Reform (Scotland) Act 2016	Affirmative	Provides a six month extension to an Amnesty period that was due to end on 12/06/2020.	12/06/2020	Six month extension - expires 12/12/2020	In force No change to status since last reporting period
The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 SSI 2020/175	Section 39 of the Prisons (Scotland) Act 1989	Negative	The Amendment Rules provide for the introduction of virtual visits, authorised personal communication devices and in-cell telephony in Scottish prisons.	15/06/2020	Open-ended	In force No change to status since last reporting period
The Health Protection (Coronavirus) (International Travel) (Scotland)	Section 94(1)(b)(i) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	Amends some of the sectoral exemptions to provide clarity on seamen and masters.	20/06/2020	12 months from 08/06/2020	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Amendment (No.2) Regulations 2020 SSI 2020/184						
The Local Government Finance (Coronavirus) (Scotland) Amendment Order 2020 SSI 2020/187	Paragraph 1 of schedule 12 of the Local Government Finance Act 1992	Affirmative	Substitutes schedule 1 of the Local Government Finance (Scotland) Order 2020, which determines the amount of revenue support grant payable to each Local Authority in Scotland, in respect of the financial year 2020-2021.	25/06/2020	31/03/2021	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 SSI 2020/191	Sections 9, 12(3), 33(2), (3) and (3A), and 36(1), (2)(a) and (g) of the Legal Aid (Scotland) Act 1986	Affirmative	Makes provision for temporary amendments to legal aid regulations (during the emergency period) to facilitate interim payments of legal aid fees, support adherence to travel restrictions and social distancing guidance, and support access to justice for appeals against special restrictions or requirement.	01/07/2020 for Regulations 1 to 3, and 05/08/2020 for Regulation 4	For the duration of the emergency period, defined as the period beginning on 01/07/2020 and ending on the date on which Part 9 of schedule 4 of the Coronavirus (Scotland) Act 2020 expires in accordance with section 12 of that Act	In force Partially in force during reporting period up to 31/07/20 Fully commenced on 05/08/2020
The Registration of	Sections 98A(6) and	Affirmative	Amends regulation 3 of Registration of	04/07/2020	Open-ended	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Independent Schools (Prescribed Persons)(Coronavirus) (Scotland) Amendment Regulations 2020 SSI 2020/205	133(2D)(b) of the Education (Scotland) Act 1980		Independent Schools (Prescribed Person) (Scotland) Regulations 2017 to extend the deadline to 01/06/2021 for those remaining teachers in independent schools to register with the General Teaching Council for Scotland.			No change to status since last reporting period
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No.3) Regulations 2020 SSI 2020/209	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	Amendments to introduce additional sectoral exemptions and exemptions from self-isolation for travellers from certain countries and territories.	10/07/2020	12 months from 08/06/2020	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Land and Buildings Transaction Tax (Tax Rates and Tax Bands) (Scotland) Amendment (No.2) (Coronavirus) Order 2020 SSI 2020/215	Section 24(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013	Made Affirmative	Temporarily raises the nil rate band for Land and Buildings Transaction Tax (LBTT) for residential property transactions from £145,000 to £250,000. The revised rates will apply to all relevant transactions where the effective date is between 15/07/2020 and 31/03/2021 (inclusive of these dates). The rates for the Additional Dwelling Supplement and non-residential LBTT will remain unchanged.	15/07/2020	The end of the day of 31/03/2021	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 SSI 2020/221	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made affirmative	Added Spain to the list of exempt countries in the international travel regulations. Travellers from these countries and territories are exempt from the requirement to self-isolate for 14 days on arrival in Scotland.	23/07/2020	12 months from 08/06/2020	In force, superseded by SSI 2020/244
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 SSI 2020/224	Section 94 of the Public Health etc. (Scotland) Act 2008	Made Affirmative	Amended the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 to remove Spain from the list of exemptions from the requirement to self-isolate for 14 days on arrival in Scotland.	26/07/2020	12 months from 08/06/2020	In force No change to status since last reporting period

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 SSI 2020/229	Sections 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	To amend the principal regulations (SSI 2020/169) to add Estonia, Latvia, Slovenia, Slovakia and St Vincent and the Grenadines to the list of exempt countries and territories in the international travel regulations. Travellers from these countries and territories are exempt from the requirement to self-isolate for 14 days on arrival in Scotland.	28/07/2020	12 months from 08/06/2020	In force No change to status since last reporting period
The Non-Domestic Rates (Coronavirus Reliefs) (Scotland)	Section 153 of the Local Government etc. (Scotland) Act 1994	Negative	Expanded the use categories of properties that qualify for the 100% rates relief introduced under	05/09/2020	31/03/2021	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Amendment Regulations 2020 SSI 2020/230			the Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 in the financial year beginning on 01/04/2020 (retrospectively, the power to do so for the financial year 2020-21 in that financial year having been introduced by schedule 4 of the Coronavirus (Scotland) (No.2) Act 2020. Amends the Non-Domestic (Coronavirus Reliefs) (Scotland) Regulations 2020 by introducing an additional relief in relation to Non-Domestic Rates in			

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			the financial year beginning on 01/04/2020, and makes consequential amendments to other regulations that provide a relief from liability to pay rates.			
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No.7) Regulations 2020 SSI 2020/233	Sections 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made affirmative	To amend the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020 to remove Luxembourg from the list of exempt countries from quarantine requirements.	31/07/2020	12 months from 08/06/2020	In force No change to status since last reporting period
The Health Protection (Coronavirus) (International Travel)	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc.	Made affirmative	To amend the principal regulations (SSI 2020/169) to remove Andorra,	Removals came into force 08/08/2020	12 months from 08/06/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
(Scotland) Amendment (No. 8) Regulations 2020 SSI 2020/235	(Scotland) Act 2008		Belgium and the Bahamas from, and add Brunei and Malaysia to, the list of exempt countries and territories in the international travel regulations. Travellers from these countries and territories are exempt from the requirement to self-isolate for 14 days on arrival in Scotland.	Additions came into force 11/08/2020		
The Representation of the People (Absent Voting at Local Government Elections) (Amendment) (Coronavirus) (Scotland)	Section 33 of the Local Electoral Administration and Registration Services (Scotland) Act 2006	Negative	Allows individuals who may be following guidance or instructed to self-isolate due to COVID-19 to be eligible for an emergency proxy vote in local	23/09/2020	2 years from commencement with duty to review after one year (September 2021)	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Regulations 2020 SSI 2020/240			government election.			
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No.9) Regulations 2020 SSI 2020/242	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made affirmative	To amend the principal regulations (SSI 2020/169) to remove France, Monaco, the Netherlands, Malta, Aruba, the Turks and Caicos Islands from the list of exempt countries and territories. Travellers from these countries and territories are exempt from the requirement to self-isolate for 14 days on arrival in Scotland.	15/08/2020	12 months from 08/06/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Direct Payments to Farmers (Controls) (Coronavirus) (Scotland) Regulations 2020 SSI 2020/244	Article 62 of Regulation 1306/2013	Negative	To reduce the control rate for inspections on direct payments for the 2020 claim year.	30/09/2020	Scheme Year 2020 (1 January to 31 December)	In force
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No.10) Regulations 2020 SSI 2020/252	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made affirmative	To amend the principal regulations (SSI 2020/169) to remove Austria, Croatia, Switzerland and Trinidad & Tobago. Added Portugal to the list of exempt countries and territories in the International Travel regulations. Travellers from these countries and territories are	22/08/2020	12 months from 08/06/2020	In force, superseded in respect of the addition of Portugal by SSI 2020/274

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
			<p>exempt from the requirement to self-isolate for 14 days on arrival in Scotland. Amends schedule 2 exemptions for oil and gas workers, Crown servants, government contractors and officials of a foreign government bringing them into line with the provisions in England and Northern Ireland. Amends schedule 3 Specified Competitions adding the Dubai Duty Free Irish Open Golf Tournament (European Tour)</p>			

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
			and The Northern Ireland Golf Open Tournament (European Challenge Tour supported by the R&A).			
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 11) Regulations 2020 SSI 2020/263	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made affirmative	To amend the principal regulations (SSI 2020/169) to remove the Czech Republic and Jamaica from, and add Cuba to, the list of exempt countries and territories in the International Travel Regulations. Travellers from these countries and territories are exempt from the requirement to self-isolate for 14	29/08/2020	12 months from 08/06/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
			days on arrival in Scotland.			
The Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment (No 2) Rules 2020 SSI 2020/264	Section 39 of the Prisons (Scotland) Act 1989	Negative	To continue amendments made to prison rules in light of coronavirus beyond 30 September 2020. This further amended the Prison Rules so that the changes made by SSI 2020/122 have effect until 31 March 2021.	29/09/2020	31/03/2021	In force
The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020	Section 29(3) and (4) Housing (Scotland) Act 1987	Negative	To temporarily modify the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 to allow temporary accommodation for	30/09/2020	31/01/2021	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
SSI 2020/268			reasons related to coronavirus.			
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 12) Regulations 2020 SSI 2020/271	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made affirmative	To amend the principal regulations (SSI 2020/169) to remove Greece from the list of exempt countries and territories in the International Travel regulations. Travellers from these countries and territories are exempt from the requirement to self-isolate for 14 days on arrival in Scotland.	03/09/2020	12 months from 08/06/2020	In force
The Health Protection (Coronavirus) (International Travel) (Scotland)	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc.	Made affirmative	To amend the principal regulations (SSI 2020/169) to remove the French Polynesia and	05/09/2020	12 months from 08/06/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Amendment (No. 13) Regulations 2020 SSI 2020/274	(Scotland) Act 2008		Portugal from the list of exempt countries and territories in the International Travel regulations. Travellers from these countries and territories are exempt from the requirement to self-isolate for 14 days on arrival in Scotland. Amends schedule 2 by amending the exemption for inspectors and surveyors of ships; and amends schedule 3 by substituting it with a new schedule 3A, which updates the list of specified competitions.			

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Valuation Timetable (Disposal of Appeals and Complaints) (Coronavirus) (Scotland) Amendment Order 2020 SSI 2020/277	Sections 13(1) and 42(1) of the Valuation and Rating (Scotland) Act 1956	Laid no procedure	To make the last date for the disposal by a valuation appeal committee of a valuation roll appeal, or complaint lodged with it, 31 December in the fourth year following the year of revaluation, instead of 31 December in the third year following a year of revaluation, unless another rule provides for a later disposal date.	29/09/2020	Open-ended	In force
The Health Protection (Coronavirus) (International Travel) (Scotland)	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc.	Made Affirmative	To amend the principal regulations (SSI 2020/169) to remove Hungry and Reunion and	12/09/2020	12 months from 08/06/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Amendment (No. 14) Regulations 2020 SSI 2020/280	(Scotland) Act 2008		add Sweden to the list of exempt countries and territories in the International Travel Regulations. Travellers from the countries and territories on the exempt list are exempt from the requirement to self-isolate for 14 days on arrival in Scotland. Also enabled a regional approach to be taken to removals from and additions to the list of exempt countries and territories in schedule A1 replaced a reference to paragraphs 37 and			

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
			38 of schedule 1 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020; and a minor amendment to the definition of "specified competition" in schedule 2.			
The Corporate Insolvency and Governance Act 2020 (Meetings of Scottish Charitable Incorporated Organisations) (Coronavirus) Regulations 2020 SSI 2020/284	Corporate Insolvency and Governance Act 2020, schedule 14, paragraph 2(2)(b)	Made affirmative	To extend the "relevant period" during which Scottish Charitable Incorporated Organisations (SCIOs) can hold meetings (such as AGMs) remotely to 30/12/2020.	30/09/2020	30/12/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
The Representation of the People (Register Publication Date)(Coronavirus)(Scotland) Regulations 2020 SSI 2020/287	S.13 Representation of the People Act 1983	Affirmative	Postpones the publication date of the revised electoral register from 01/12/2020 to 01/12/2021 to give electoral administrators more time to complete their canvass with reduced resources (an impact of COVID-19).	Laid 25/06/2020, made 16/09/20. To come into force the day they are made.	01/02/2020	In force
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 15) Regulations 2020 SSI 2020/288	Section 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	They remove Guadeloupe and Slovenia from the list of exempt countries and territories in Part 1 of schedule A1 of the International Travel Regulations. This means that persons arriving in Scotland at or after	19/09/2020	12 months from 08/06/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
			the time these regulations come into force are no longer exempt from the movement restriction in regulation 6 of the International Travel Regulations if, during the 14 days preceding their arrival, they have departed from, or transited through, Guadeloupe or Slovenia.			
The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 16)	Sections 94(1)(b)(i) and 122(2)(b) of the Public Health etc. (Scotland) Act 2008	Made Affirmative	Amend the International Travel Regulations to update country exemptions and passenger information requirements.	26/09/2020	12 months from 08/06/2020	In force

SSI title and number	Power under which SSI was made	Parliamentary procedure to which SSI was subject	Brief description of what the SSI does	Date(s) of commencement	Period for which it has effect	Status at the end of the reporting period (30 Sept 2020)
Regulations 2020 SSI 2020/301						



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