

# **Proposed Extension of The Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020**

## **Statement of Reasons**

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## Statement of Reasons

### 1. Background to proposal

- 1.1 The Coronavirus (Scotland) Act 2020 (the 'first Scottish Act') came into force on 7 April 2020 (except for one provision) and the Coronavirus (Scotland) (No.2) Act 2020 (the 'second Scottish Act') came into force on 27 May 2020. The Acts have provided powers and measures which have helped to protect the public, maintain essential public services and support the economy in the face of the unprecedented and ongoing public health and economic challenges created by the pandemic. This includes protections for individuals in areas such as housing, measures to support the ongoing operation of the justice system, and support for public bodies in their response to coronavirus (COVID-19) such as adjustments to deadlines for reports and accounts.
- 1.2 As set out under section 12 of the first Scottish Act, and section 9 of the second Scottish Act, Part 1 of both Acts expire on 30 September 2020.
- 1.3 On 11 August 2020, the Cabinet Secretary for Constitution, Europe and External Affairs confirmed the Scottish Government's intention to lay draft regulations for the Parliament to consider which would seek to extend the expiry date of Part 1 of both Scottish Coronavirus Acts from 30 September 2020 to 31 March 2021. As required by section 12(6) of the first Scottish Act and section 9(6) of the second Scottish Act, this Statement of Reasons has been prepared by the Scottish Government to set out reasons for making the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 (the 'extension regulations'). This Statement of Reasons is laid ahead of the draft extension regulations as required by section 12(6) of the first Scottish Act and section 9(6) of the second Scottish Act.
- 1.4 At the time the Scottish Government laid the 'Coronavirus Acts: first report to Scottish Parliament'<sup>1</sup>, it had recently published on 21 May 2020: 'Coronavirus (COVID-19): Scotland's route map through and out of the crisis'<sup>2</sup> (the 'route map'). When the 'Coronavirus Acts: second report to Scottish Parliament'<sup>3</sup> was laid before Parliament on 11 August 2020, Scotland was in phase three of the route map and remains in this phase as the Scottish Government lays this Statement of Reasons. Scotland has made major progress in tackling coronavirus but there remains a very real risk both of a potential resurgence or

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

<sup>2</sup> Coronavirus (COVID-19): Scotland's route map through and out of the crisis - <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/>

<sup>3</sup> Coronavirus Acts: second report to Scottish Parliament - <https://www.gov.scot/publications/coronavirus-acts-second-report-scottish-parliament/>

‘second wave’ of the virus, and that impacts could as yet emerge from the first wave which require further action to be taken in response.

- 1.5 It is in this context that Scottish Ministers have given consideration to the question of whether Part 1 of the Scottish Acts should be extended. In doing so, careful consideration has been given to the requirement to balance the needs of many stakeholders and partners who wish to see the provisions remain available, against the commitment given when the Acts were introduced that the powers would not remain in place unless necessary. In view of the continuing risk of a resurgence of the virus, the assessment that Ministers have arrived at in proposing to extend the Acts is proportionate and appropriate to the scale of that risk.
- 1.6 Part 1 of each 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 and with the agreement of the Parliament. Anything that should not be extended is therefore required to be expired early through separate regulations. The Scottish Government has taken the decision that, subject to the agreement of Parliament, Part 1 of both Acts should be extended, to 31 March 2021. Following the laying of this Statement of Reasons, the Scottish Government will lay draft regulations to amend the expiry dates of both Acts accordingly. However, this extension will not include all provisions in the Acts which are currently in place. Alongside the regulations to extend Part 1 of the Acts, the Scottish Government is also laying a separate set of regulations to expire provisions on 29 September 2020 and so these provisions would not be covered by an extension to Part 1 of both Acts - the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 (the ‘expiry regulations’.)
- 1.7 The Scottish Government has been clear that the provisions contained within the Scottish Acts must only be in place for as long as it is necessary and therefore in the preparations for the potential extension of the Acts, consideration has been given to whether each individual provision continues to be needed beyond 30 September 2020. It has been judged that 13 paragraphs of various schedules will no longer be needed and can be expired. These paragraphs are therefore included in the expiry regulations and will expire on 29 September 2020 and further information on the basis for arriving at the decision to expire those provisions is set out within the Policy Note for those regulations.
- 1.8 Three provisions are being proposed for suspension. This will ensure that those provisions will be available to be revived at a future point if required, for example, if certain thresholds for commencing their operation are met; to support the Scottish Government, public bodies, and the third sector as we transition out of lockdown; and to ensure that the appropriate tools are available, should there be a resurgence of the virus. Should the extension regulations not be made, then Part 1 of both Scottish Acts would expire on 30 September 2020, so the suspension of the provisions would have no effect. Separate suspension regulations are being prepared for these provisions, to be laid in the near future, in order to ensure that Parliament has as full a picture as possible of the intended status of the provisions in the Acts beyond 30 September.

- 1.9 The reporting requirement under section 15 of the first Scottish Act and section 12 of the second Scottish Act will continue to be in place until Part 1 of the Acts expire, including during a period of extension up to 31 March 2021. The reporting periods under the legislation end on 30 September 2020, 30 November 2020, 31 January 2021, and 31 March 2021. It is also important to note that, throughout the proposed six month extension period, if provisions are deemed to be no longer necessary during that time, they could be subject to suspension, revival and/or early expiry. Proposing that Part 1 of both Acts be extended at this time does not mean that all provisions covered by the extension need remain in place until 31 March 2021. As it has done throughout the life of the Acts so far, the Scottish Government will keep the continued necessity of these provisions under review.
- 1.10 This Statement of Reasons provides further detail on the considerations that have been made in arriving at the recommended list of provisions which are proposed to be covered by the extension regulations to be laid before the Parliament to extend the expiry date of Part 1 of the first and second Scottish Coronavirus Acts.

## **2. Rights and equality considerations**

- 2.1 The Scottish Government has acknowledged in its two-monthly reporting on the Coronavirus Acts, that some provisions have more significant impacts on rights and equality than others. As part of the assessment of continued necessity of the provisions beyond the 30 September 2020 expiry date of Part 1 of both Scottish Acts, an assessment of the rights and equality impacts of extension has been undertaken.
- 2.2 Equality Impact Assessments (EQIA) and Child Rights and Wellbeing Impact Assessments (CRWIA) were undertaken for both of the Scottish Acts as part of the development of the Bills which were introduced to Parliament on 31 March and 11 May 2020 respectively. The human rights impacts were summarised in the Policy Memorandums for each of the Acts. For some provisions, there have been no significant changes since this time and no additional rights or equality impacts are expected in the proposed extension of the provisions. Further information has been provided, where relevant and/or helpful, later in this Statement. Examples of this include:
- Information at section 5.1 below, which sets out consideration that has been given to the rights and equality implications of extending the provisions relating to eviction from dwelling houses under the first Scottish Act; and
  - Section 5.5 below sets out the human rights impacts that have been taken into account in the consideration of the extension of paragraphs 11(2) and 11(3) of schedule 3 of the first Scottish Act relating to vulnerable adults. These considerations were a relevant factor in proposing that the provisions are extended but suspended at this time. This protection of suspending these provisions provides additional assurance that they will not be used unless necessary, and they would require to be revived through regulations.

- 2.3 In setting out the proposals for the extension of the provisions under both Scottish Acts which are covered in this note, as with all legislation, the Acts were assessed for compliance with Convention rights before introduction and a similar assessment remains valid for the extension period.

### **3. Consultation**

- 3.1 A formal public consultation exercise on the proposal for the extension regulations has not been undertaken due to the timescales in which decisions on extension and relevant preparations have had to be made. However, as part of the ongoing review of continued necessity of the provisions and the formal process as required under the legislation to report to Parliament every two months on the operation and status of provisions, since both of the Scottish Acts came into force, there has been ongoing stakeholder engagement and consultation on whether the provisions continue to be necessary.
- 3.2 As noted above, these reporting requirements under the legislation will continue to remain in place throughout the life of Part 1 of the Acts. There are also examples which are covered later in this statement, which detail the stakeholder engagement that has been undertaken to arrive at the proposals for extension, including for the provisions relating to evictions from dwelling houses, pre-action requirements, vulnerable adults and Local Authority meetings.

### **4. Proportionality**

- 4.1 As part of the assessment of continued necessity that was undertaken, the Scottish Government considered if there were alternative options to extension for the provisions under Part 1 of both of the Scottish Acts. In all cases, for those provisions which are covered in this note, extension of the provisions was deemed to be necessary, proportionate and appropriate.

## **5. Provisions proposed for extension**

### **5.1 First Scottish Act: Section 2 and schedule 1 - Eviction from dwelling-houses, and Second Scottish Act: Section 2 and schedule 1, Part 2 - Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears**

#### **Eviction from dwelling-houses**

- 5.1.1 Extending this provision will continue to provide renters with additional protection from eviction during the longer term impact of the pandemic. This will help to provide certainty for tenants, including those who have become unemployed during the pandemic, or will become unemployed as the furlough scheme ends, who are concerned about paying their rent by ensuring that they have time to apply for, and benefit from, the interventions available to support them to pay their bills before a landlord can take eviction action.
- 5.1.2 The Scottish Government is in regular contact with those representing landlords, letting agents and tenants in both the private and social rented sectors, Local Authorities and the Scottish Housing Regulator. The Scottish Government has engaged with these stakeholders proactively to respond to the needs of tenants and landlords during the period of the coronavirus outbreak through three specific resilience groups (Social Rented Sector, Private Rented Sector and Local Authority) established in response to the outbreak. Informal consultation on the impact of an extension of these provisions has been undertaken as part of this engagement.
- 5.1.3 The Scottish Government has considered the implications of not extending the eviction from dwelling houses provisions. However, this would mean that tenants who may only now be experiencing the negative effects of the pandemic, or who are made redundant following the end of the furlough scheme, would not benefit from the additional time provided under the extended notice periods to apply for, and receive, the available support in the short term. It would also mean that they would not benefit from the additional time provided under the extended notice periods to plan for the longer term, if necessary, as Scotland recovers from this unprecedented crisis.
- 5.1.4 In addition, the First-tier Tribunal for Scotland (Housing and Property Chamber) would no longer have discretion to take into account the full circumstances of the case including the impact of the pandemic, when determining private rented sector evictions cases where the ground for eviction was rent arrears.
- 5.1.5 The Scottish Government has assessed the potential impact of extending eviction from dwelling houses provisions on equal opportunities and has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership) either directly or indirectly. The Scottish Government has assessed the impact of these measures on island communities,

local government and sustainable development and has not identified any detrimental impacts of extending the provisions.

- 5.1.6 The Scottish Government has assessed the potential impact of an extension of the provisions on human rights. Consideration has been given to the impact of the provisions on a landlord's human rights with regards to their ability to be able to regain possession of their property in relation to Article 1, Protocol 1 of European Convention on Human Rights (ECHR).
- 5.1.7 The Scottish Government's view is that the temporary provisions continue to strike an appropriate balance between the landlord's rights in the property and the right of the tenant to be protected during the public health coronavirus pandemic. A fair balance has been struck by ensuring that the measures are temporary and opting for a limited extension to three months' notice in certain appropriate grounds. 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. In addition, the emergency provisions include a power to vary the length of the extended notice periods. This provides Scottish Ministers with the flexibility to respond to the uncertainty around the duration of the impact of the pandemic. These varying powers provide the necessary mechanism to maintain an appropriate balance between the rights of tenants and landlords.
- 5.1.8 Over recent years the private rented sector has seen an increasing number of families calling it home. Based on the latest published Scottish Household Survey (SHS) data, there are an estimated 70,000 family households out of 340,000 in the private rented sector in Scotland, with 5% of private rented households being single parent families, 12% being small families and 3% being large families.
- 5.1.9 In the social rented sector there are 150,000 family households out of 580,000. The SHS data shows that 11% of social rented households were single parent families, 9% were small families and 5% were large families.
- 5.1.10 Many of these family households will be significantly impacted by the current coronavirus crisis, therefore the provisions being taken forward to protect renters from eviction during this time are highly likely to have a positive impact on both children and young people residing within these rented family homes.
- 5.1.11 Should these legislative measures not be extended, families with children may face an increased risk of being evicted from their rented properties and therefore significantly increase the chances of households becoming homeless. Therefore not extending this temporary legislative action is likely to have a detrimental impact on children's and young people's rights.
- 5.1.12 Evidence suggests that some tenants in both the private and social rented sectors are finding themselves in serious financial difficulty due to the pandemic, finding themselves unable to meet their obligations under their tenancy agreement to pay their rent. Under normal pre-coronavirus housing legislation, tenants are at a greater risk of having their home repossessed by their landlord

at a time when housing, health and other public services continue to be under acute and ongoing pressure.

- 5.1.13 This policy is purely concerned with implementing temporary measures to help protect tenants from eviction during the coronavirus crisis. This is in recognition of the significant impact it is having on a large number of tenants' financial circumstances. It is not intended to impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties.
- 5.1.14 However, women are the majority of renters in the social rented sector. People from non-white backgrounds are more likely than people from white backgrounds to live in the private rented sector. Women and people with disabilities are more likely to rely on social security as part or all of their income, and to live on low incomes. Women are more likely to have caring responsibilities and therefore be impacted more significantly – socially and financially - by the consequences of the outbreak. Action to protect people who rent from eviction during the outbreak should have a positive impact on outcomes for these groups.
- 5.1.15 The Scottish Government considers that extending these temporary legislative changes is likely to positively impact across those with protected characteristics, as the legislative measures provide additional protection from being evicted during the longer term impacts of the pandemic.

#### **Tenancies pre-action requirements for order for possession or eviction order on ground of rent arrears**

- 5.1.16 The extension of the pre-action requirements provisions will encourage sustainment of tenancies during the coronavirus outbreak by ensuring that, prior to seeking repossession of a property on the grounds of rent arrears, landlords make reasonable efforts to work with tenants to manage arrears.
- 5.1.17 This measure complements the action taken to protect tenants from eviction action in the first Scottish Act and formalises the steps landlords should take when seeking to work with tenants to manage arrears, helping to sustain tenancies and prevent homelessness.
- 5.1.18 The Scottish Government is in regular contact with those representing landlords, letting agents and tenants and Local Authorities. Officials have engaged with these stakeholders proactively to respond to the needs of tenants and landlords during the period of the coronavirus outbreak including through the Private Rented Sector Resilience Group which was established in response to the outbreak. Informal consultation on the impact of an extension of these provisions has been undertaken.
- 5.1.19 The Scottish Government considered the implications of not extending this provision, however, extension is necessary to give regulations enabled by this provision time to come into effect.
- 5.1.20 The introduction of pre-action requirements is an important measure in supporting tenants in the private rented sector, who are in rent arrears for a

reason related to the pandemic, to sustain their tenancies, reducing the likelihood of eviction and subsequent homelessness. Housing, health and other public services are already under acute and ongoing pressure, and this pressure would only get worse should there be an increase in evictions, placing people at risk.

- 5.1.21 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. The Scottish Government also considers that 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. Although, the provision is a control on landlords' property and engages Article 1 Protocol 1 of ECHR, the Scottish Government is satisfied that the interference, which informs the Tribunal's decision as to whether an eviction for rent arrears is reasonable, continues to be proportionate.
- 5.1.22 Evidence suggest that tenants in private rented sector are experiencing financial difficulty due to the pandemic and finding themselves unable to meet their obligations under their tenancy agreement. Under normal pre-coronavirus housing legislation, tenants would be at greater risk of having their home repossessed by their landlord at a time when housing, health and other public services are under acute and ongoing pressure.
- 5.1.23 As outlined above, over recent years the private rented sector has seen an increasing number of families calling it home.
- 5.1.24 Many of these family households will be significantly impacted by coronavirus, therefore the provisions being extended introduce pre-action requirements alongside additional emergency measures to give tenants greater protection from eviction during this time, and are highly likely to have a positive impact on both children and young people residing within these rented family homes.
- 5.1.25 Similar to the provisions relating to eviction from dwelling houses, extending these provisions is likely to positively impact across those with protected characteristics, as the legislative measures provide additional protection from being evicted during the longer-term impacts of the pandemic.

## **5.2 Second Scottish Act: Section 2 and schedule 1, Part 1 - Student residential tenancy: termination by tenant**

- 5.2.1 The aim of extending these provisions is to ensure that an appropriate notice to leave period exists for students residing in halls of residence and Purpose-Built Student Accommodation (PBSA), should restrictions in response to the coronavirus pandemic continue or be re-introduced. The provisions ensure that should, for a reason relating to coronavirus, a student be unable to take up their accommodation, they are not held liable to pay for accommodation they are not using.

- 5.2.2 The Scottish Government has had continuous engagement with members of the Student Accommodation Group, membership includes: Universities Scotland, Colleges Scotland, NUS Scotland, the Association of Student Residential Accommodation (ASRA), College and University Business Officers (CUBO), Emilytest, the Scottish Funding Council, AMOSSHE – The Student Services Organisation, and the University of Edinburgh.
- 5.2.3 The Scottish Government has considered the implications of not extending the provisions, however, this would result in a notice to leave period not existing for students in halls of residence and PBSA. Should further restrictions be imposed or re-introduced and students wish to return home or make alternative accommodation arrangements, as the purpose for which they took up student accommodation may be fundamentally undermined by restrictions, students would not be able to give notice to leave and could potentially be held liable for rental payments for an entire academic year, or as dictated within individual tenancy agreements.
- 5.2.4 Given students renting within the private rented sector have the statutory right to give 28 days' notice, this puts students who choose to rent in halls of residence and PBSA on a very different footing and could potentially financially disadvantage this group of students, in already challenging financial times.
- 5.2.5 Extending the 28 day notice to leave period will bring student's tenancy rights in halls of residence and PBSAs in relation to notice to leave periods in line with those students residing in the mainstream private rented sector. Extending the seven day notice to leave period will offer a notice period that otherwise wouldn't have existed for students who entered into leases prior to the Act coming into force, recognising that these students could not have reasonably foreseen the pandemic impacting their ability to take up their accommodation when entering into leases. This therefore enhances student rights from an equal opportunities, human rights and island communities perspective, as without an extension to the provisions, notice to leave periods in relation to students residing in halls of residence and PBSA do not exist.
- 5.2.6 Without these provisions, students could potentially be held liable for rental payments for an entire academic year for accommodation they are not able to use as a result of restrictions put in place in response to the coronavirus pandemic.
- 5.2.7 These provisions will bring student's tenancy rights in halls of residence and PBSAs in relation to notice periods in line with those students residing in the mainstream private rented sector. It should be noted that 61% of students who live in private sector halls are under 21 and 74% of students who live in provider maintained property are 21 and under. The extension of these provisions will strengthen young people's rights and ensure that they are not financially disadvantaged by being held liable to pay for accommodation for a full academic year that they are not able to use as a result of coronavirus.
- 5.2.8 The decision to extend these provisions is intended to implement temporary measures to help protect students from being held liable to pay for

accommodation they are not able to use and the significant financial impact that may have on students. It is not intended to impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties.

- 5.2.9 However, the majority of those in student accommodation are women. Almost half of students in halls are from outside the UK and hence, those staying in PBSA and halls of residence are potentially more likely to have a wider variety of ethnic backgrounds. The majority of students residing in PBSA and halls of residence are 21 and under. Action to protect students from being held liable to pay for accommodation they are not able to use as a result of the outbreak should have a positive impact on outcomes for these groups.
- 5.2.10 The Scottish Government considers that the temporary extension of these provisions is likely to positively impact across those with protected characteristics, as the legislative measures will protect them from the financial impact of being held liable to pay for accommodation they are not able to use.

### **5.3 First Scottish Act: Section 3 and schedule 2 - Temporary extension of moratoriums on diligence, and Second Scottish Act: Section 2 and schedule 1, Part 5 – Bankruptcy**

- 5.3.1 The extension of the existing moratorium on diligence and bankruptcy from six weeks to six months prevents creditors from taking action against individuals who have financial difficulties in order to allow those individuals time to find advice on how best to deal with their debts, and in current circumstances, also to recover from time-limited income shocks without having to take serious steps like applying for bankruptcy.
- 5.3.2 The measures in the second Scottish Act are largely aimed at protecting those in unsustainable debt by making bankruptcy more accessible. They do this by lowering fees (to zero in most cases), increasing thresholds for the “lighter touch” form of bankruptcy, increasing the minimum amount someone must owe before a creditor can take action, and allowing more electronic and virtual administration (for example, removing the need for wet signatures).
- 5.3.3 Representations of support of the extension of these provisions have been received from a number of leading debt advice charities.
- 5.3.4 As there is no new information available since the passage of the Acts on rights and equality impacts related to these provisions, no new assessment of rights or equality implications has been undertaken for the provisions additional to those developed for the two Coronavirus Scotland Bills. However, those assessments remain valid for the extension of the provisions in terms of human rights impacts, in that it remains that interference with creditors’ property rights is justified by protection of debtors, and there is a fair balance between the interests of debtors and creditors.

#### **5.4 First Scottish Act: Section 4 and schedule 3 - Children and vulnerable adults – Part 1: Children (Section 4 and schedule 3 - Part 1, paragraphs 1-5, and 7-10)**

5.4.1 These provisions are proposed for extension:

- Due to current operational, system capacity and physical distancing constraints that the Scottish Children’s Reporter Administration is facing, and that are likely to persist;
- To ensure that services can access and provide support to vulnerable children who would otherwise be less visible to services during coronavirus;
- To provide flexibility, and a remedy, if people are unable to connect to a children’s hearing which must make a decision;
- In order to make best use of available panel members for virtual children’s hearings;
- To provide flexibility and reduce the impact on courts as they reopen and begin to tackle backlogs;
- To remove the obligation on children and relevant persons to attend hearings where there are practical transport or connectivity issues or they do not feel safe to do so;
- To ensure that virtual children’s hearings can continue to take place; and
- To ensure that Local Authorities already using the provisions relating to foster care and the timescales for review of children’s cases when they are placed in kinship care can continue and to provide flexibility should there be an increase in referrals.

5.4.2 The Scottish Children’s Reporter Administration, Children’s Hearings Scotland and Social Work Scotland were all consulted informally about particular aspects of the children’s hearings provisions. Scottish Local Authorities were surveyed in relation to the use of the looked after children provisions and to ascertain their views on whether they continued to be necessary. Whilst not all Local Authorities have needed to use the provisions, there has been a general consensus that the additional flexibilities arising from these 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 when schools return, or a resurgence of the virus, which could place additional pressure on foster or kinship placements.

5.4.3 These provisions do not discriminate in respect of protected characteristics, human rights or island communities. The provisions should have no detrimental impact on sustainable development, and should support Local Authorities to carry out their statutory duties in a time of pressure.

5.4.4 The assessment in the CRWIA and EQIA prepared at the time of the introduction of the Coronavirus (Scotland) Bill still remain accurate as regards the looked after children provisions. There is a limited negative impact on individual children as assessment timeframes are extended in order to ensure that all children can be safely provided for. For the children’s hearings provisions, those impact assessments were reconsidered in the light of the current and projected operating conditions for the next six month period but did not need updated. It is

the view of the Scottish Government that the preservation of these flexibilities remain justified in order to keep children safe.

5.4.5 Paragraph 6 of schedule 3, of the first Scottish Act is being expired and therefore is not covered in this Statement.

## **5.5 First Scottish Act: Section 4 and schedule 3 - Children and vulnerable adults – Part 2: Vulnerable adults – paragraphs 11(2) and 11(3)**

5.5.1 Both the guardianship provisions (sections 11(2), 11(3)(b) and 11(3)(c)) and the section 47 certificate provisions (section 11(3)(a)) are to be extended but will also be suspended from 30 September 2020.

5.5.2 Guardianship provisions were brought in because there was a concern about whether the system would be able to process renewals of guardianship in sufficient time. Renewal applications have to be lodged with the court before the original expires, otherwise a whole new application has to be made, rendering the work put into the renewal reports otiose and meaning that additional, unnecessary work is required for the new guardianship. In order to prevent this, the 'clock was stopped' on expiry of guardianship orders, meaning that they would not expire for the period the provision was in force.

5.5.3 Time has moved on and circumstances have changed. The courts are now processing guardianship orders as 'business as usual' and the Office of the Public Guardian has sufficient staff to be able to process the applications and orders sent from the court. There is also more availability than there has been since the provisions have been in force, of doctors and mental health officers to produce the reports required for an application.

5.5.4 Therefore there is no requirement for the expiry of guardianships to be extended for any longer and so this provision is to be suspended, due to the above noted change in circumstances. However, there remains concern about the possibility of a resurgence of the virus and therefore this provision is proposed to be suspended rather than expired, in order that it could be revived by regulations, if required at a future point.

5.5.5 There is a similar argument for section 47 certificates to authorise medical treatment for adults lacking capacity. This requires a doctor to sign a certificate and therefore the process is much less onerous than a guardianship order. There is more availability of doctors and this extension of the expiry of medical certificates is no longer required. However, as per guardianships, there remains concern about the possibility of a resurgence of the virus and therefore this provision is being suspended, rather than expired.

5.5.6 Consultation was undertaken with the Law Society of Scotland, Social Work Scotland, the Scottish Courts and Tribunals Service (SCTS), the Office of the Public Guardian, the Convention of Scottish Local Authorities (COSLA), the Mental Welfare Commission, Health and Social Care Scotland and the Centre for Mental Health and Capacity law at Edinburgh Napier University.

- 5.5.7 Extending the provisions was considered and that was the wish of some of the stakeholders. The benefits were seen to be a more gradual and co-ordinated return to normal business and to take the pressure off mental health officers and doctors.
- 5.5.8 Equal opportunities and human rights were carefully considered in decisions on this matter. Those people who had a guardianship that would have expired without renewal have already had a guardianship applied to them for longer than would have been possible under existing legislation. It should be noted that there is a route for people to challenge their guardianships under the Adults with Incapacity (Scotland) Act 2000. Whilst these measures being available for use in the initial term of Part 1 of the first Scottish Act was deemed to be necessary, as outlined above, circumstances have changed. Extending for a further six months and maintaining the status of the provision that it is ‘commenced on 7 April 2020 but no delegated powers used’, could result in the provision being operational for a year and would raise serious human rights concerns. In recognition of this, the provisions are being extended but with a parallel provision made in separate regulations to suspend them. The provisions can only be revived at a future point (in the life of Part 1 of the first Scottish Act) through regulations which would be subject to scrutiny by Parliament. A similar point applies to section 47 certificates.
- 5.5.9 Schedule 3, Part 2, paragraph 11(1) is being expired and is therefore not covered in this Statement.

## **5.6 Provisions relating to the justice system**

- 5.6.1 Scotland’s justice system has faced and continues to face a monumental challenge, from the impact of the global pandemic and the need to build a whole systems approach to recovery, renewal and transformation. A clear recognition and acknowledgement should be placed on record to all justice partners for their immediate, effective and collaborative work in their response to this pandemic. These challenges are being faced by jurisdictions around the world and there are no simple solutions.
- 5.6.2 As an illustration of the current challenges facing our justice system, SCTS statistics suggest prior to the challenges presented by the pandemic, we faced outstanding summary trials backlogs of approximately 23,000 and outstanding solemn trials of approximately 1,400. Under a ‘do nothing’ scenario (whereby the system continues to attempt to process cases largely as it did before the crisis) recent Justice Analytical Services research suggests total trial backlogs could increase to 35,700 cases in a low impact scenario or to 62,300 cases in a high impact scenario, with additional average delays in concluding cases at summary trial of up to nearly a year, additional average delays in concluding cases at solemn trial of up to and over a year, with implications for all of the people involved with these cases (victims, witnesses and accused).

- 5.6.3 The Scottish Government moved decisively to introduce this emergency legislation, enabling the justice system to immediately respond to rapidly-evolving priorities. New and innovative ways of working in order to respond to COVID-19 have been introduced to aid recovery of the system and we are now preparing for renewal and transformation.
- 5.6.4 Much of this will undoubtedly build on the emergency response, which has seen an acceleration of improvement approaches from processing court business virtually and for case information and evidence to be shared digitally. Such provisions allow for 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 movement and contact. This enables documents to be sent, served and lodged by email or other electronic means. The ability of the justice system to continue to deliver essential services and business would otherwise have been adversely affected through physical processes. The provisions also allow court hearings to be conducted remotely. The justice system is reliant upon these provisions to maximise the use of technology in order to reduce pressure on physical court estate. Remote hearings and electronic processes have increased across all areas of criminal and civil business utilising these provisions.
- 5.6.5 It is expected that ability to facilitate virtual appearances from custody will continue to be required, to allow physical distancing and the minimising of transport. While the court system will remain under pressure to conduct trials, particularly for High Court business within physical court estate, this will provide our justice system with added capacity, through virtual courts and with the use of Prisoner Custody Officers. The resource pressure caused by the pandemic – which creates barriers to the continued effective operation of criminal court business and access to justice – will continue to be a significant issue for the foreseeable future, whether on a national basis or as a more localised response to outbreaks. The existing provisions allow less serious offending behaviour to be appropriately dealt with outwith the criminal courts, thus reducing the burden on our courts, and helping with the significant backlog of court business, by freeing up courts to deal with more serious offending behaviour. Provisions enabling 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, support the continued operation of custody court business during the period of the pandemic and allows custody courts to be conducted in a way which minimises unnecessary travel and congregation of people in accordance with public health guidance.
- 5.6.6 While there has been an increase in criminal court business in the immediate period at the time of the preparation of this Statement of Reasons, when compared to the impact of COVID-19 in March, April and May, there remains a very significant backlog of cases and significantly reduced capacity to hear jury trials, in particular, evidenced by the significant increase in the number of people being held on remand in Scottish prisons. Provisions introduced on time limits ensure that the courts will not be impacted by very large numbers of individual hearings to extend time limits where competent and justice can still be

progressed, including for victims, by avoiding proceedings being declared unlawful.

- 5.6.7 It has been essential to ensure the court has the powers to prevent the expiry of an undertaking and any conditions attached to it if a person fails to appear at court as required by the terms of their undertaking, where the court considers that the failure to appear is attributable to a reason relating to coronavirus and it is not appropriate to grant a warrant for the person's arrest. This enables the preservation of protective conditions of undertaking that may otherwise be lost where a person fails to attend court due to coronavirus and remains a key measure to preserve public and victim safety during the pandemic outbreak, particularly in sensitive cases of domestic abuse.
- 5.6.8 The continuing use of these provisions is essential to underpin not only the current operation of the criminal justice system but also to ensure the viability of the emerging 'Recover, Renew and Transform' Programme of work which is focussed on recovering a viable justice system, that can live with COVID-19, whilst delivering more effective and efficient outcomes which are fundamental to protecting rights and freedoms and addressing inequality.
- 5.6.9 The Scottish Government has considered the rights and equality impacts of extending the justice provisions noted below and no additional rights or equality impacts have been identified.
- 5.6.10 The provisions which are being proposed for extension are:
- First Scottish Act - Section 5 and schedule 4, Part 1 - Courts and tribunals: conduct of business by electronic means
  - First Scottish Act - Section 5 and schedule 4, Part 2 - Fiscal fines
  - First Scottish Act - Section 5 and schedule 4, Part 3 - Cases beginning with an appearance from custody
  - First Scottish Act - Section 5 and schedule 4, Part 4 - Extension of time limits
  - Second Scottish Act - Section 3, schedule 2 and Part 1 Criminal Justice - Criminal proceedings: extension of time limits
  - First Scottish Act - Section 5 and schedule 4, Part 5 – Evidence
  - First Scottish Act - Section 5 and schedule 4, Part 6 - Community orders
  - First Scottish Act - Section 5 and schedule 4, Part 7 - Parole Board
  - First Scottish Act - Section 5 and schedule 4, Part 8 - Release of prisoners
  - First Scottish Act - Section 5 and schedule 4, Part 9 - Legal Aid
  - First Scottish Act - Section 6 and schedule 5 – Alcohol licensing and schedule 6, Part 1- licensing other than alcohol.
  - Second Scottish Act - Section 3, schedule 2 and Part 1 Criminal Justice - Arrangements for the custody of persons detained at police stations
  - Second Scottish Act - Section 3, schedule 2 and Part 1 Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016
  - Second Scottish Act - Section 3, schedule 2 Part 2 – Proceeds of Crime
  - Second Scottish Act - Section 3, schedule 2 Part 3 – Intimation, etc. of documents

- Second Scottish Act - Section 5, schedule 4 , Part 7 - Execution of documents, etc.
- Second Scottish Act - Section 2 and schedule 1 Part 10 – Marriage and civil partnership

### **5.7 Second Scottish Act: Section 3 and schedule 2, Part 1 Criminal Justice – Fixed penalty notices under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020**

- 5.7.1 It remains the policy intention that Fixed Penalty Notices under the regulations should only be given to those aged 18 and above, and extension of this provision maintains this policy position.
- 5.7.2 At the Bill stages of the Parliamentary process, Ministers noted that people aged 16 or 17 were vulnerable and should not be subject to Fixed Penalty Notices under the regulations. No new rights and equality implications have been identified in relation to extension of this provision.

### **5.8 First Scottish Act: Section 7 and schedule 6, Part 2 – Freedom of Information (FOI), and Second Scottish Act: Section 5 and schedule 4, Part 8 – Freedom of information**

- 5.8.1 **First Scottish Act** - Section 10(1) of the Freedom of Information (Scotland) Act 2002 (“FOISA”) imposes a duty on Scottish public authorities to respond to requests for information promptly, and in any event not later than the 20th working day after receipt of the request. A similar 20 working day limit applies under section 21(1) if an authority is asked by the requester to review the initial response.
- 5.8.2 FOISA has no provision to allow an authority not to comply with these timescales in an emergency. The Scottish Information Commissioner (‘the Commissioner’) has no discretion to take into account the circumstances when considering whether such an authority has complied with Part 1 of FOISA. Accordingly, if a requester appeals to the Commissioner about a failure to respond on time, the Commissioner would have no option but to find that the authority had failed to comply with Part 1 of FOISA.
- 5.8.3 The policy objective of paragraph 6 is to enable the Commissioner to have the necessary discretion to consider whether the authorities had reasonable cause for failing to comply with the timescales as a result of the coronavirus outbreak.
- 5.8.4 The policy objective of paragraph 7 is to facilitate the electronic issuing of notices by the Commissioner and other authorities, in order that they may continue to discharge their duties under FOISA while they are unable to issue formal notices by post.
- 5.8.5 **Second Scottish Act** - Paragraph 12 of schedule 4 to the second Act provides that while the temporary modifications to FOISA made by the first Act are in

force, the Scottish Ministers must report to the Scottish Parliament on certain aspects of their responses to requests for information under FOISA.

- 5.8.6 As the remaining temporary modifications to FOISA made by the first Act are proposed for extension, the Scottish Government considers that this provision should also remain in force to give effect to the will of Parliament expressed in passing this provision.
- 5.8.7 The Scottish Government has discussed the extension of these provisions with the Commissioner, who considers that both should be extended. Given the timescales for completing each stage of the FOI process, significant numbers of cases to which the paragraph 6 provision might apply have not yet begun to reach the Commissioner's office, but the Commissioner anticipates that this will begin to pick up as authorities complete reviews of requests and the requester then has the ability to apply to the Commissioner for a decision. The Commissioner estimated that cases affected by the coronavirus outbreak might continue to reach his office for up to 10 months to a year after the end of the outbreak, and that the power would continue to be relevant for such cases through to the point of issuing a decision notice.
- 5.8.8 The Commissioner also noted that the ability to issue formal notices electronically is of assistance to his office and to other authorities at least until non-essential office premises are able, in practice, to reopen fully.
- 5.8.9 The Scottish Government has considered the potential impact of extending the provisions under the first Scottish Act and has determined that:
- they do not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly;
  - no detrimental effects on human rights are anticipated;
  - they will have no significantly different impact on island communities;
  - they will have a small positive impact on local government, as Local Authorities are subject to FOISA and so will be able to rely on both provisions in discharging their duties under that Act; and
  - they will have no detrimental effects on sustainable development.
- 5.8.10 The minimal adverse impacts on children and young people identified in the CRWIA were resolved when the second Scottish Act repealed the provisions extending FOI timescales. The Scottish Government does not consider that the provisions proposed for extension have any impacts on children and young people. The Scottish Government has also reconsidered the equality implications set out in the EQIA. It considers that no positive or negative impacts on any of the protected characteristics would arise as a result of extending these provisions.
- 5.8.11 These provisions in the second Scottish Act only impose duties on the Scottish Ministers and does not affect any other person. Accordingly, the Scottish

Government does not consider that it has any impact on any of the rights or equalities implications.

## **5.9 First Scottish Act: Section 7 and schedule 6, Part 3 - Duties in respect of reports and other documents**

- 5.9.1 There are provisions in a wide range of legislation, primary and secondary, that require public bodies to make certain reports on their activities at particular times. There are also many provisions that require them to publish certain documents in a particular way or make them available for physical inspection, for example in council offices or libraries or by placing them at the site to which the document relates.
- 5.9.2 Paragraph 8 of schedule 6 allows for statutory reports to be delayed where publishing them would impede the organisation's ability to take action against coronavirus. If an authority decides to postpone the publication of a report, they must publish a statement to that effect, and comply with the duty as soon as is reasonably practicable. Paragraph 9 allows for documents to be made available online where making them physically available risks spreading the virus or is ineffective due to restrictions in place. When there is no longer a risk of infection, the authority must either comply with the original duty or publish a statement setting out the reasons for not doing so.
- 5.9.3 The Scottish Government's intention in extending these provisions is to ensure that public authorities are able to continue to carry out their business and meet their statutory duties, while also taking action to respond to the coronavirus outbreak. It will also ensure that information about the exercise of public functions and decision-making continues to be as widely available as possible, without risking the spread of infection.
- 5.9.4 These provisions will be needed to some extent until public authorities are able to return to normal operations and with offices open to the public. Since they require public authorities to make a judgement to justify each use of the powers, it is considered reasonable to keep the provisions in place as restrictions are lifted, in case of future re-imposition of restrictions nationally or locally.
- 5.9.5 The removal of requirements for certain documents to be made available for physical inspection and provision of information only online has the potential to reduce access to the information for those people who have less access to online technologies at home. However, the measure is necessary to enable Local Authority business and other public services to continue while offices and libraries are closed to prevent spread of the virus. Without such a change authorities and public bodies would be unable to comply with statutory duties. It is considered that the measures are proportionate and meet a fair balance between the potential impact on the ability of individuals to participate in decision-making which may affect them, and the wider public interest. The exercise of the powers is a matter for the consideration of the authority in the circumstances. It is considered that the provisions are compatible with ECHR.

- 5.9.6 Possible alternative approaches would include removing these provisions, thus returning to the existing statutory duties or removing the duties to publish information completely. Removing the provisions would leave many public bodies unable to comply with statutory duties and removing the duties completely could mean that the public would not have the opportunity to scrutinise public bodies' business and decision-making. The Scottish Government does not consider either of these is an acceptable option.
- 5.9.7 The Scottish Government has assessed the potential impact of the proposed measure on equal opportunities and has determined it does not unlawfully directly discriminate in any way with respect to any of the protected characteristics. The Scottish Government considers there may be some impact in terms of limiting access to documents for older people and those with long-term health conditions, who use online technologies less than other groups. However, older people and those with long-term health conditions are also identified as being at greater risk from the virus. As the aim of the policy is to allow business to continue while action is taken to reduce spread of the virus, the Scottish Government considers this to be a reasonable and appropriate measure.
- 5.9.8 The Scottish Government has assessed the potential impact of the proposed measure on island communities and on sustainable development, and no detrimental effects are anticipated. On impacts on local government, this provision will relieve Local Authorities temporarily from a number of their duties.

#### **5.10 First Scottish Act: Section 7 and schedule 6, Part 4 - Local Authority meetings**

- 5.10.1 The coronavirus pandemic has presented Local Authorities with a number of difficulties in operating their normal governance meetings. Emergency and temporary governance arrangements have had to be implemented. The duty to require public access to their committee meetings has become extremely challenging to meet, given most offices have been closed and, in some cases, insufficient technology is available to enable remote meetings.
- 5.10.2 Paragraph 13 of schedule 6 provides that, for the duration of the coronavirus outbreak, Local Authorities have the power to exclude the public from meetings if the Local Authority considers that, if members of the public are present, this would create a real or substantial risk to public health, specifically relating to infection or contamination by coronavirus. Formal consultation on proposed extension of this provision has not been undertaken, however, COSLA was supportive of its introduction and its continuation.
- 5.10.3 This provision, if utilised by a Local Authority, will have an impact on the openness and transparency of Local Authority decision-making. However, it will avoid the situation where an authority may be unable to comply with statutory duties, when offices are closed. Local Authorities are expected to take reasonable measures to ensure that the public can still view meeting proceedings online and all public items considered at these meetings along with

minutes will continue to be made accessible online – there has been no change to legislation in respect of that. The Scottish Government has assessed the potential impact of the proposed extension of this measure on human rights and children’s rights, and no detrimental effects are anticipated.

- 5.10.4 Enabling Local Authorities to assess their local circumstances and decide whether it is appropriate to exclude the public from their committee meetings on public health grounds associated with coronavirus could have an impact on some particular groupings of the public. Should Local Authority Committee meetings be held using technology and not in person, there may be a disproportionate impact on older people, people with disabilities or members of the public who don’t have the infrastructure or skillset to access public meetings remotely. However, some of these groups are also identified as being at greater risk from the virus. The aim of the policy is to allow business to continue while action is taken to reduce spread of the virus, and the Scottish Government considers this to be an appropriate measure.

#### **5.11 First Scottish Act: Section 7 and schedule 6, Part 5 - Duties under the Public Finance and Accountability (Scotland) Act 2000**

- 5.11.1 The provisions allow for amendment of the statutory deadlines for annual accounts as set by the Public Finance and Accountability Act 2000. The deadlines for such accounts is the 31 December 2020 this year and 31 December 2021 next year. As the first statutory deadline has yet to be reached, removing the mechanism to amend the deadline before it might be required could potentially lead to the need for subsequent legislation to re-enact it shortly thereafter.
- 5.11.2 Therefore, it is deemed prudent to retain the provision to ensure if there is further disruption to the timetable then there is a mechanism to ensure there is not a breach of the statutory deadlines.
- 5.11.3 No formal consultation with affected bodies has been possible. However, Audit Scotland at the Public Audit and Post-legislative Scrutiny Committee acknowledged that there may be need to flex the statutory frameworks to allow public bodies to report. Also, current expected reporting dates for key areas such as the Scottish Government itself and NHS Bodies are in December which are at the limit of the current deadlines and due to the risk of a resurgence of the virus it is deemed necessary at this time to retain it.
- 5.11.4 No rights or equality implications were identified in relation to extension of this provision.

## **5.12 First Scottish Act: Section 8 and schedule 7 - paragraph 1(b) and paragraph 5 – Social security**

- 5.12.1 The extension of the provision will require Social Security Scotland to complete a redetermination as soon as reasonably practicable whilst providing an additional 9 weeks, on top of the original 16 working days, to do so.
- 5.12.2 In considering extension, Scottish Ministers have considered the practical issues that clients and Social Security Scotland will face as this period of disruption continues. Clients' ability to gather and submit any further information may continue to be impacted by the coronavirus outbreak and submission of further evidence may be delayed or impacted by inbound mail issues and for other reasons. As normal life continues to be disrupted by measures to suppress the virus, staff at Social Security Scotland may be dealing with further and future absence as a result of illness for some time yet, as well as the need to care for family members who are ill, the need to provide child-care, the loss of staff to other areas of work, and other disruption related to the coronavirus outbreak.
- 5.12.3 This does not mean that the Scottish Government expects Social Security Scotland to necessarily take the additional nine weeks to complete each redetermination. Rather, it reflects that impacts on operations are unknown and is intended to provide for the worst case scenario. Social Security Scotland will still be expected to deal with redeterminations as quickly as the situation allows.
- 5.12.4 The Scottish Government has assessed the potential impact of the proposed measure on equal opportunities and has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.
- 5.12.5 The Scottish Government has assessed the potential impact of the proposed measure on human rights. The Social Security (Scotland) Act 2018 (the '2018 Act') implements a human rights-based approach to the administration of the Scottish social security system. The Scottish social security principles are set out in section 1 of the 2018 Act, including the principle that "social security is itself a human right and essential to the realisation of other human rights" (section 1(b)).
- 5.12.6 The impact of coronavirus is also expected to affect the operations of Social Security Scotland, which administers social security assistance on behalf of the Scottish Ministers. This is expected to mean that the normal timescales for redeterminations under the 2018 Act will be unable to be met in the majority of cases. In recognition of that impact, and to avoid a large number of cases proceeding to appeal before the First-tier Tribunal unnecessarily, the Act will also allow a longer period of time for the Scottish Ministers to carry out re-determinations. The period of extension is no more than is necessary to ensure the effective administration of the social security system in the circumstances, and in all cases re-determinations will be made as quickly as possible ensuring that individual rights are respected.

### **5.13 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**

- 5.13.1 The aim of extending the provision is to protect tenants with a commercial lease over a property from eviction for non-payment of rent in a short time period. Ultimately, this will assist in keeping businesses afloat and retaining jobs to allow the economy to recover.
- 5.13.2 The need for the provision was self-evident in that if businesses were evicted in the immediate aftermath of lockdown, closure would follow and there would be a commensurate loss in jobs and economic activity. Non-eviction is complementary to other provisions in the Act in providing support for businesses where there is little or no income and effectively allowing for rental payments to be deferred and giving sufficient time for landlords and tenants to come to individual commercial agreements. The introduction of the 'Code of Practice for commercial property relationships during the COVID-19 pandemic' which was issued on 19 June 2020 by the UK Government, and applicable in Scotland, bolsters the anti-irritancy provisions in providing guidance on how landlords and tenants are expected to behave to arrive at mutually acceptable rental deferments, holidays, reductions and lease restructuring. The Code of Practice applies until 24 June 2021 and, as it is complementary, it is considered that the anti-irritancy provisions should continue alongside it beyond September 2020 in the first instance.
- 5.13.3 Expiring the provision in September 2020 would also have the slightly perverse effect of allowing earlier evictions than was possible when the measure was in force. For example, a landlord serving an eviction notice on 29 September 2020 could not regain possession until 5 January 2021, while reverting to the 14 day period would mean eviction would be possible on 15 October 2020 if notice was served on 1 October 2020.
- 5.13.4 Discussions have been held with a wide cross section of bodies representing lender, landlord and tenant interests, including:
- Royal Institution of Chartered Surveyors (RICS)
  - Scottish Property Federation (SPF)
  - Law Society of Scotland (LSS)
  - Royal Bank of Scotland
  - Scottish Financial Enterprise (SFE)
  - Virgin Money
  - Scottish Retail Consortium (SRC)
- 5.13.5 The Scottish Government has assessed the potential impact of the proposed measure on human rights. The Act amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 to alter the period of notice which a landlord of a commercial lease must give to the tenant before the landlord can irritate the lease on the grounds of non-payment of rent. While the alterations to the limitations on the landlords ability to irritate a lease may potentially engage Article 1 Protocol 1 of the ECHR it is considered that this is fair and proportionate in the circumstances and any such interference with property rights is justifiable

in the public interest when balanced against the impact on the individual landlord.

- 5.13.6 The Scottish Government has assessed the potential impact of the proposed measure on island communities and has determined it will have no significantly different impact on island communities. No detrimental effects are anticipated. The Scottish Government has also assessed the potential impact of the proposed measure on local government and has determined that no adverse effect is anticipated. The Scottish Government has also assessed the potential impact of the proposed measure on sustainable development and no detrimental effects are anticipated.
- 5.13.7 Alternative approaches have been considered and the only alternative is to expire the provision. A decision not to extend would rely on negotiation between landlords and tenants to provide a solution, leading to inequality and uncertainty of treatment. In the circumstances, no alternative to retaining the primary legislation exists.

#### **5.14 First Scottish Act: Section 8 and schedule 7, paragraphs 8 to 10 - Duration of planning permission, and Second Scottish Act: Section 5 and Schedule 4, Part 2 – Listed buildings and conservation areas consents**

- 5.14.1 The Scottish Government has sought feedback from the Scottish Property Federation, Homes for Scotland and Heads of Planning Scotland on the continuing need for these provisions. Feedback received has been positive with respect to the use of the provisions to date. There was support for their continuation and highlighting of risks if the flexibilities afforded by the provisions did not continue.
- 5.14.2 The Scottish Government believes that extending these provisions to extend the duration of planning permission and to bring heritage consents in line with planning permissions will support the construction sector in its recovery from the coronavirus restrictions, reduce the burden on authorities needing to reconsider applications, and provide consistency to businesses operating across the UK.
- 5.14.3 The UK Business and Planning Act 2020 came into effect on 19 August 2020 which includes similar provisions to extend the duration of planning permissions and Listed Building Consents due to expire within the period from 23 March 2020 until 31 December 2020, with the extended period extending up to 1 May 2021.
- 5.14.4 During the original consideration and development of the first and second Scottish Acts, it was not considered that these provisions had any detrimental impact on rights and equality. Since the Acts came into effect no issues have been raised or identified which has resulted in that initial assessment to be revised.

### **5.15 First Scottish Act: Section 8 and schedule 7, paragraphs 11 to 19 – Land Registration**

- 5.15.1 It is not clear that the Keeper of the Registers of Scotland can reopen the Registers of Scotland to physical mail and function safely at scale whilst adhering to public health guidance in next six months.
- 5.15.2 The provisions have been well received, solicitors and Registers of Scotland have invested in technology and business change to implement the provisions.
- 5.15.3 There remain no significant implications for human rights with no groups disadvantaged by the operation or extension of the provisions.
- 5.15.4 Until such time as the offices of the Keeper are fully reopened, remote electronic submission provisions will remain necessary as no practical alternative means of conveyancing deeds being registered exists.
- 5.15.5 The Keeper continues to review the use of the powers and engages directly with the Parliament via the Economy, Energy and Fair Work Committee on operational matters routinely, and this would be expected to continue. The Keeper has maintained a dialogue with key stakeholders including the Law Society of Scotland. Users of the portal have expressed a desire for ongoing use of the remote submission facility.
- 5.15.6 Impact assessments have been carried over a wide range of areas including: equal opportunities, human rights and island communities. There remains no significant implications for human rights by the operation or extension of the provisions.

### **5.16 Second Scottish Act: Section 5 and Schedule 4, Part 3 - Registers kept by the Keeper of the Registers of Scotland**

- 5.16.1 These provisions are necessary to enable the full range of registrations in the Register of Inhibitions (RoI) and the Register of Judgements (RoJ) while the Keeper's offices remain closed and she is unable to process paper registrations.
- 5.16.2 If the RoI provisions are not extended, creditors will not be able to use this means of safeguarding their position, leaving debtors free to transact with heritable property. Equally, debtors will be unable to discharge existing restrictions.
- 5.16.3 If the RoJ provisions are not extended, parties will be unable to register and then enforce certain court judgments from other jurisdictions.
- 5.16.4 In addition to consulting with the Lord President, these measures have been discussed with the Conveyancing Professorial Panel and shared with National Records of Scotland. Users of the portal have expressed a desire for ongoing use of the remote submission facility.

5.16.5 Impact Assessments have been carried over a wide range of areas including, equal opportunities, human rights and island communities. There remains no implications for human rights with no groups disadvantaged by the operation or extension of the provisions.

#### **5.17 First Scottish Act: Section 8 and schedule 7, paragraphs 20 – 22 Anatomy Act 1984: extension of periods**

5.17.1 Extending the suspension of the offence of not disposing of a body/body part within the three year period set out in the Anatomy Act 1984 will ensure that the five Scottish anatomy schools will not inadvertently breach the requirement due to crematoriums and/or funeral directors being unable to collect and cremate bodies/ body parts due to impact of the coronavirus.

5.17.2 The Scottish Government liaised with HM Inspector of Anatomy (HMAS) and he has consulted the five heads of anatomy schools. All agree that the suspension should continue.

5.17.3 Consideration was given to sending bodies/body parts for cremation early but that would not be practical as it would leave the schools with no vital teaching specimens. Bequests have been made by individuals for their remains to be used to teach medical students and related professionals. Sending all for cremation “just in case” would go against the spirit in which the bequests were made and is likely to be unnecessarily excessive.

5.17.4 There are no human rights, children’s rights or equality impacts anticipated from the extension of these provisions. The bodies are the responsibility of each of the five universities that run an anatomy programme. All have been bequeathed to the university by the deceased (prior to death) and consent has been given by each individual for the anatomy school to dispose of their remains in accordance with the Anatomy Act 1984.

#### **5.18 First Scottish Act: Section 8 and schedule 7, paragraphs 23 to 30 - Scrutiny of subordinate legislation in urgent cases**

5.18.1 The purpose of the provision is to allow the use of the made affirmative procedure for a Scottish Statutory Instrument that would otherwise be made under affirmative procedure, where this is necessary by reason of urgency. The provision is considered to continue to be necessary and therefore proposed to be extended because there remains a need to have the ability to progress secondary legislation which would otherwise be made under the affirmative procedure, under an emergency draft affirmative procedure should this be needed.

5.18.2 The Scottish Government is satisfied that the provision continues to be appropriate and proportionate in the current circumstances, in order 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 provision would only be exercised when necessary, and no rights or equality implications have been identified in relation to extension of the provision.

#### **5.19 First Scottish Act: Section 8 and schedule 7, paragraph 31 – Business Improvement Districts: extension of certain arrangements**

- 5.19.1 Extending the provision beyond 30 September 2020 would provide clarity to Business Improvement District (BID) groups and partners that it is still a valid provision and that there is no legal requirement to ballot during the remainder of the current financial year.
- 5.19.2 This clarity is vital as, without the provision, there is a risk to the future of certain BIDs (in addition to those already supported) which could not reasonably re-ballot before 31 March 2021 due to the coronavirus pandemic, but should be allowed to continue their valuable work. This failure to renew would present an increased risk to vulnerable individuals and to the survival of local businesses at this time.
- 5.19.3 Rights and equality implications were fully considered during the development of the provision as part of the original Coronavirus (Scotland) Bill development process and no additional implications have been identified in relation to extending the provision.

#### **5.20 First Scottish Act: Section 8 and schedule 7, paragraphs 32 and 33 – Muirburn**

- 5.20.1 The Scottish Government does not envisage that the provisions relating to muirburn will be required beyond 30 September. However, it is possible that were Scotland to revert to a complete lockdown phase, the provisions may need to be revived.
- 5.20.2 In order to accommodate any possible further need for the provisions in future, they will be extended to 31 March 2021 but with a parallel provision made (in separate regulations which will come into force on 1 October 2020) to suspend the provisions to enable muirburn to commence on 1 October 2020.
- 5.20.3 The provisions were brought in as a temporary measure to reduce pressures on the emergency services. Non-essential outdoor work places, with physical distancing, have been allowed to operate since Phase 1 of the route map, and muirburn is therefore expected to recommence from 1 October 2020. This is in line with the muirburn season as defined in the Hill Farming Act 1946 (as amended).
- 5.20.4 No rights and equality implications have been identified in relation to the extension of this provision.

## **5.21 Second Scottish Act: Schedule 1, Part 3 - Carer's Allowance Supplement**

- 5.21.1 The provisions have the effect of adding £230.10 (a 'Coronavirus Carer's Allowance Supplement') to awards of Carer's Allowance Supplement for the period from 1 April to 30 September 2020.
- 5.21.2 Extension of these provisions will ensure carers who are receiving backdated awards of Carer's Allowance Supplement for this period can also receive the extra Coronavirus Carer's Allowance Supplement after this period, most usually when the next set of payments are made in December 2020.
- 5.21.3 Carer's Allowance Supplement payments may sometimes be backdated more than six months due to backdating of the qualifying benefit, Carer's Allowance.
- 5.21.4 Ongoing engagement with carer organisations in Scotland on the impact of the coronavirus outbreak on unpaid carers was a key consideration in developing these provisions. The extension of these provisions will ensure that the Coronavirus Carer's Allowance Supplement can be paid to all eligible carers.
- 5.21.5 The Scottish Government assessed the potential impact of extending the measure on equal opportunities and has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.
- 5.21.6 The provisions have no significantly different impact on island communities, local government or sustainable development. No detrimental effects are anticipated.
- 5.21.7 Extending the provisions will ensure that all eligible carers receive the Coronavirus Carer's Allowance Supplement.
- 5.21.8 The additional payment of Carer's Allowance Supplement – the Coronavirus Carer's Allowance Supplement – is likely to have a disproportionately positive impact on women, as they make up more than two-thirds of recipients. The Scottish Government also anticipates a disproportionately positive impact on disabled people, as the person the carer looks after will be disabled. The payment can help maintain the health and wellbeing of the carer, which has knock on positive impacts for the looked after person, and in cases where the carer lives with the cared for person, a potentially positive impact on overall household finances.
- 5.21.9 The Scottish Government has assessed the potential impact of extending the proposed measure on human and children's rights and has determined that no detrimental effects are anticipated. Young carers under 16 will not benefit directly from the Coronavirus Carer's Allowance Supplement, as it is necessary to be 16 or over to apply for Carer's Allowance which is an income replacement benefit. However, there will be indirect positive impacts on children and young people who are cared for by someone in receipt of Carer's Allowance.

## **5.22 Second Scottish Act: Section 2 and schedule 1, Part 4 - Social care staff support fund**

- 5.22.1 The aim of extending this provision is to continue to support infection prevention and control measures as part of our response to the coronavirus pandemic, and to support the Scottish Government's overall commitment to fair work in the social care sector.
- 5.22.2 A Business and Regulatory Impact Assessment has been carried out for these provisions, and key stakeholders who represent the interests of the sector are involved in regular discussions regarding the operation of the provisions and their continued necessity.
- 5.22.3 Without the provisions of this Fund, many social care workers may experience financial hardship if they were absent from work due to having a confirmed case of coronavirus, or self-isolating in line with public health guidance. This is because their employment terms and conditions are such that they would receive Statutory Sick Pay or another amount which is less than their expected income.
- 5.22.4 The Fund goes some way to ensuring those with less favourable terms and conditions do not experience financial hardship due to not being able to work due to coronavirus.
- 5.22.5 An EQIA was not carried out during the development of the provisions, however, extensive consultation was carried out with key stakeholders. These stakeholders were closely involved in the development of the policy. No additional implications have been identified in the review of the extension of these provisions.
- 5.22.6 In developing proposals, a stakeholder group was formed to better assess the impact of the policy and to refine the proposals. A number of stakeholders were involved in discussions including:
- two umbrella organisations representing social care providers;
  - integration authorities and Local Authorities; and
  - three trades unions.
- 5.22.7 The Scottish Government has maintained regular contact with key stakeholders including social care provider representative organisations and trade unions who are in agreement that the Fund should continue.

## **5.23 Second Scottish Act: Section 2 and schedule 1, Part 6 – Mental Health: named person nomination**

- 5.23.1 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.

- 5.23.2 This change only affects the process for the proposed named person. The policy intention is to keep the safeguards a named person offers but minimise the disruption caused by the pandemic, therefore both the patient and the proposed named person are still required to fulfil the original process which requires for this to be made in writing.
- 5.23.3 There are no changes to the process for the patient. The safeguards around the nomination process are unaffected and in particular, nominations continue to have to be made in writing. The patient will still require to have their signature witnessed by a prescribed person. The prescribed person in witnessing the signature will be certifying that they believe that the patient understands the effect of their nomination and that the patient also has not been subject to any undue influence in making the nomination.
- 5.23.4 Extending the provision:
- will continue to ensure that the patient still has the ability to choose their own representation;
  - provides for a named person to act for the patient; and
  - will reduce any delays in having the patient involved in their care and treatment decisions.
- 5.23.5 The requirement for a named person to be nominated by a patient and the subsequent requirements around witnessing were changes introduced to the Mental Health (Care and Treatment) (Scotland) Act 2003 via the Mental Health (Scotland) Act 2015. Therefore the only way to remove the need for a witness is via primary legislation as it will remove the legal requirement for this practice to continue on a temporary basis.
- 5.23.6 The Scottish Government has consulted key stakeholders which include the Mental Health Tribunal Scotland, Social Work Scotland, the Mental Welfare Commission for Scotland, SCTS and the Royal College of Psychiatrists, who fully support the need for this change.
- 5.23.7 Additionally this has also been supported by the Scottish Association for Mental Health (SAMH) which recognises the difficulties this situation is causing when the Scottish Government first sought to introduce these temporary measures.
- 5.23.8 The Scottish Government has assessed whether there was potential for these temporary measures to impact on equal opportunities, human rights, island communities, local government and sustainable development and found that there would be no detrimental effects. These temporary provisions have been assessed for their potential to impact on equal opportunities and it was determined that they do not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.
- 5.23.9 Although these temporary changes do not apply to those under 16, the provisions ensure that patients still have the ability to choose their own named

person, while minimising any delays in the process of nomination caused by the outbreak. This in turn will reduce any delays in having the patient involved in their care and treatment decisions.

## **5.24 Second Scottish Act - Schedule 1, Part 7: Care Homes**

- 5.24.1 These powers have been put in place to allow Health Boards and Scottish Ministers to make the swift interventions in care homes when it is considered the tests for intervention set down in section 63A and B and 65A of the Public Services Reform (Scotland) Act 2010 ('the 2010 Act') have been met.
- 5.24.2 The circumstances in which the Scottish Government would expect the powers in both section 63A and B and section 65A of the 2010 Act to be used, however, are rare. The standard and quality of care in care homes in Scotland is predominately high and the circumstances which these powers relate to are where there is, for a reason relating to coronavirus, a serious or imminent risk to life or health, or a serious risk to life, health or wellbeing (in relation to the powers in section 65A of the 2010 Act) or a material risk to health of people in a care home (in relation to the powers at sections 63A and B of the 2010 Act).
- 5.24.3 Despite this, while the virus is still present, and while there is still the possibility of a resurgence of the virus, it is the opinion of the Scottish Government that these powers should remain in place for at least the next six months as they provide important assurance to those who depend on care services, their families, and the staff that deliver care, that swift action and additional oversight and support is available in the rare circumstances that it may be required.
- 5.24.4 The Scottish Government has considered the potential impact of extending these provisions on those with protected characteristics, and it does not envisage any adverse impact.
- 5.24.5 It is not anticipated that these provisions will have any adverse impact on human rights. An application to intervene in a care home under section 65A of the 2010 Act will be made to a court by the Scottish Ministers so it will consider the impact of any intervention on human rights. Whilst the Scottish Ministers can intervene in a care home in certain very limited and serious circumstances before making an application to the courts, the Scottish Ministers are obliged to ensure it is necessary to intervene in a care home and any such intervention is proportionate. Any such intervention is also subject to the consideration of the courts within 24 hours. A Health Board is under a similar obligation in relation to the use of its power under section 63A of the 2010 Act, and if it is needed, can only enter a care home to enforce any direction if a warrant has been obtained by the courts.

## **5.25 Second Scottish Act: Section 2 and schedule 1, Part 8: Powers to purchase care home services and care at home providers**

- 5.25.1 The legislation builds on established powers and ensures, provided there is agreement, that action can be taken to acquire a care home or a care at home service which seeks to ensure the continuity of care is not 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.
- 5.25.2 These powers enable a Local Authority or a relevant health body to act to acquire a care home service or Local Authority to acquire a care at home service in circumstances relating to coronavirus where 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. These powers enable a Local Authority or relevant health body to act to safeguard the interests of the residents of a care home. Equally, and where there is agreement in relation to acquisition of the service, these powers seek to ensure a Local Authority can quickly put in place continuity of care for those who receive a care at home service.
- 5.25.3 While coronavirus is still present in the population and there is still the possibility of a resurgence of the virus, the safety net and assurance these powers provide is still needed.
- 5.25.4 The Scottish Government has considered the potential impact of extending these provisions on those with protected characteristics and on human rights. Given the voluntary nature of the powers and that both parties involved in any transaction are to reach agreement about the acquisition of any property, it does not envisage any adverse impact on these matters.

## **5.26 Second Scottish Act: Section 2 and schedule 1, Part 9: Care Homes: Further provision**

- 5.26.1 There are 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 (setting out which care home services it has inspected as well as the findings of those inspections); and a weekly report on the number of deaths notified by care home service providers.

### **Fortnightly report on inspections**

- 5.26.2 Where serious concerns in services have been identified, returning quickly to check and report on improvements, often more than once, has provided powerful

evidence of the value of robust, independent scrutiny and assurance, the diagnostic element of scrutiny, and most importantly the improvement that directly arises from it.

- 5.26.3 The view of the Care Inspectorate and the Scottish Government is that this process should remain in place for at least another six months as it has provided some good evidence that scrutiny supports improvement and is an improving activity in its own right, where inspectors spend time not only identifying strengths and areas for improvement, but providing advice, guidance and support and embedding best practice.
- 5.26.4 This process has also been helpful in getting information into the public domain more quickly to provide assurance to the Scottish Ministers, Parliament and the public at a time where levels of anxiety about the safety and wellbeing of care home residents is understandably high. This level of scrutiny and reporting is expected by Scottish Ministers, Parliament and the public for at least another six months.
- 5.26.5 The Scottish Government invited the views of the Care Inspectorate on extending these provisions and it was supportive of the proposal.
- 5.26.6 The reporting duties provided for help to support the Scottish Government's commitment to transparency for care homes for adults. The Scottish Government does not expect there to be an adverse impact on human rights or equality matters. The Scottish Government is aware of the potential impact of increased monitoring and reporting on individual care homes at this difficult time. The Scottish Government will continue to work with its partners, providers of services and their representative bodies on how it can ease the burden on the sector and will continue to ensure human rights and equality issues are at the forefront as we respond to the pandemic.

#### **Weekly report on deaths in Care Homes for Adults**

- 5.26.7 It may be helpful for the Care Inspectorate to continue to report weekly for the rest of 2020-2021 to provide transparency on deaths, and coronavirus-related deaths in care homes while the threat from the coronavirus remains. The Scottish Government will regularly review the need for this.
- 5.26.8 For the purposes of the Care Inspectorate's continued understanding of the quality of care in care homes, it would be helpful to retain section 79A of the 2010 Act for at least another six months or until the threat from coronavirus has been substantially reduced.
- 5.26.9 The Scottish Government invited the views of the Care Inspectorate on extending the provisions and it was supportive of the proposal.
- 5.26.10 The Scottish Government does not expect there to be an adverse impact on human rights or equality matters. The Scottish Government is aware of the potential impact of increased monitoring and reporting on individual care homes at this difficult time. The Scottish Government will continue to work with its

partners, providers of services and their representative bodies on how it can ease the burden on the sector and will continue to ensure human rights and equality issues are at the forefront as we respond to the pandemic.

## **5.27 Second Scottish Act: Section 5 and schedule 4, Part 4 - Care services: giving of notices by the Care Inspectorate**

- 5.27.1 Section 101 of the Public Services Reform (Scotland) Act 2010 ('the 2010 Act') sets out how Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate) is to give a notice to a person providing, or seeking to provide, a care service when required. Paragraph 5 of schedule 4 modifies section 101 of the 2010 Act during the emergency period (the period for which paragraph 5 is in force). It temporarily changes the law on giving notice by "personal service" in relation to corporate bodies, and on giving notice electronically. This provision enables the Care Inspectorate, when delivering a notice personally to a body corporate (for instance, following an on-site inspection), to serve it on a wider range of people, including a care home manager or a director, secretary or other similar officer of the body. It also enables the Care Inspectorate to send formal notices to registered care service providers, and those seeking to provide a care service, by electronic means for the duration of the emergency period.
- 5.27.2 This has been an important legislative change from the point of view of the Care Inspectorate as it has enabled it to serve electronic notices. During the pandemic its offices have remained closed. This means staff are unable to access printers to enable hard copy correspondence to be issued. Additionally, the accessing of postal services would have been difficult and it would have been even more difficult to justify using the only alternative (but for this change) of effecting the giving of notice by hand delivery which would have necessitated face-to-face contact.
- 5.27.3 The Scottish Government invited the views of the Care Inspectorate on extending the provisions and it was supportive of the proposal.
- 5.27.4 The view of the Care Inspectorate and the Scottish Government is that the provisions need to remain in place for at least the next six months, given business practices are not yet operating as they normally do, and that notices can continue to be served at the earliest opportunity to care home managers and a wider group of representatives of that care service provider where there is an immediate need to do so.
- 5.27.5 The provisions enable the Care Inspectorate to perform its statutory duties during the emergency period. The Scottish Government does not expect there to be an adverse impact on rights, equality matters, or on the operational business of organisations as a result of this provision being extended.

## **5.28 Second Scottish Act: Section 5 and schedule 4, Part 9 - Low emission zones**

- 5.28.1 Extension of the provision beyond 30 September 2020 will allow for meeting the objective stated in the second Scottish Act – namely the laying of a report by Scottish Ministers by 4 December 2020.
- 5.28.2 A number of meetings have taken place with Low Emission Zones stakeholders including a Low Emission Zone Leadership meeting on 6 August 2020, when the impacts of coronavirus and the introduction of Low Emission Zones was consulted on.
- 5.28.3 It is not considered that there are any rights and equality implications associated with an extension of this provision.

## **5.29 Second Scottish Act: Section 5 and schedule 4, Part 10 - Council tax: exempt dwellings**

- 5.29.1 The second Scottish Act created an exemption for a property that was exempt due to being occupied by students, a student's spouse or dependant(s), school leavers, or people under the age of 18, and which then became unoccupied on or after 17 March 2020 for a reason relating to coronavirus. From (and including) 27 May 2020, such a property is exempt from paying council tax until it is occupied or these provisions in the Act come to an end.
- 5.29.2 A number of students left their student accommodation properties in March 2020 due to the pandemic to study remotely in family homes. Many will have chosen not to return to student accommodation due to localised lockdowns in their own jurisdiction, or in the university town they are planning to attend.
- 5.29.3 Coronavirus has not been eradicated in Scotland and there is a possibility of a resurgence of the virus. The Scottish Government can re-impose lockdown restrictions depending on the spread of the pandemic. This has happened in Aberdeen City which has a high number of student accommodation properties.
- 5.29.4 Whilst some students may be returning to schools and colleges, there are a number who are continuing to study remotely. Many colleges and universities are delivering courses online. As a result of these issues, a number of student accommodation properties may remain empty with landlords receiving no income.
- 5.29.5 While the virus is still present, and while there is still the possibility of a resurgence of the virus, it is the opinion of the Scottish Government that these powers should remain to provide support to those businesses that rely on students renting their properties during term time.
- 5.29.6 It is not envisaged that there will be any adverse impact related to any protected characteristic from the extension of these provisions. No equality or human right

implications have been identified or raised since these provisions came into effect.

### **5.30 Second Scottish Act: Section 5 and schedule 4, Part 11 - Traffic Regulation**

- 5.30.1 Extending the provision will continue to give Local Authorities the option of making longer term temporary changes to the regulation of footpaths, bridleways, byways and cycle tracks should those be considered necessary as part of their coronavirus recovery plans. Given that these were amendments agreed to the second Scottish Bill during its Parliamentary process it is considered appropriate for them to be extended as part of the general Act extension.
- 5.30.2 The Scottish Government consulted with a number of key stakeholders, including Local Authorities, and no concerns were raised regarding this provision being extended.
- 5.30.3 It is not envisaged that there will be any rights or equality implications associated with an extension of this provision.

### **5.31 Second Scottish Act: Section 5 and schedule 4, Part 12 - Restriction on giving grant to businesses connected to tax havens**

- 5.31.1 The aim of extending this provision is to ensure the continued operation of the restriction on coronavirus-related funding, so that cash grants are not given to companies with connections to certain tax havens.
- 5.31.2 This measure is intended to incentivise corporate social responsibility in the form of positive tax behaviour.
- 5.31.3 It continues to present a risk, that businesses which provide essential services to vulnerable groups could be prohibited from receiving grant funding. Businesses who are subject to this provision are being continually monitored as part of the policy.
- 5.31.4 Coronavirus-related grants will continue to be made by public bodies for some time to come, therefore, to ensure that the intention of Parliament is met, this restriction is proposed to be continued via extension of the provisions in the Act.
- 5.31.5 The Scottish Government carried out an internal consideration of equalities and human rights implications at the Bill stages of the Parliamentary process. No new rights or equality implications have been identified in relation to extension of this provision.



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