

Coronavirus (Scotland) Act 2020 - Guidance to Scottish Government Stakeholders

Introduction

1. This short guidance note is intended to give central and local government and public bodies in Scotland an overview of key measures contained within the Coronavirus (Scotland) Act 2020, which will come into force on Tuesday 7 April.
2. This is not a comprehensive or in depth overview of the provisions of the Bill. Rather it is intended to highlight key changes made by the Act, and to provide a short guide to public authorities regarding how the new legislation may affect key areas of business.
3. The focus of this guidance is on those provisions with effect across the public sector in Scotland, for example in relation to the temporary changes which have been made to reporting and publication requirements, and to Freedom of Information timescales. However, Annex A provides a fuller list of measures contained within the Act. Annex B summarises guidance in key areas and signposts contacts for further information.

Background

4. The Coronavirus (Scotland) Bill completed all stages of the legislative process in the Scottish Parliament on Wednesday 1 April.
5. The Act is intended to provide relief during the coronavirus outbreak, and the disruption caused by the outbreak. The Scottish Government's clear commitment is that none of its provisions will last longer than is necessary and that the provisions are proportionate to deal with the outbreak and its effects.
6. Part 1 of the Act (sections 1 to 8 and linked schedules) expires on **30 September 2020**, six months after coming into force. However, that period can be extended by regulations approved by the Scottish Parliament if required: first to **31 March 2021**, and then to **30 September 2021**. It cannot be extended longer than that.
7. The Act provides for dealing with the situation where any of its provisions becomes unneeded earlier than the dates set out above. Under section 11, provisions in Part 1 of the Act can be suspended and revived by the Scottish Ministers, if they are temporarily no longer required but there is reason to believe they may become required again.
8. Alternatively, if satisfied that any provisions in Part 1 of the Act are unnecessary and will no longer be required, the Scottish Ministers can cause them to expire early under section 13.

9. The Act will come into force on the day after Royal Assent except for paragraph 11(1) of schedule 3.

Key areas of interest for providers of public services

10. The Act contains measures designed to ease the pressures of day to day business for public services - recognising the severe strain which may be placed on their resources during the current emergency. Two areas in particular are likely to be of relevance across the public sector in Scotland:
 - Duties in respect of reports and other documents
 - Amendments to the Freedom of Information (Scotland) Act 2002

Duties in respect of reports and other documents.

11. Provisions in Schedule 6, Part 3 of the Act allow the Scottish Ministers or Scottish public authorities to postpone publishing reports or laying reports before the Scottish Parliament if they are of the view that doing so is likely to impede their ability to take effective action to prevent, protect against, delay or otherwise control the incidence or transmission of coronavirus.
12. This applies to statutory duties which are within the legislative competence of the Scottish Parliament and which require the Scottish Ministers or a Scottish public authority to publish, or to publish and lay before the Scottish Parliament, reports (and any other associated documents) in connection with the exercise of their functions.
13. Where Scottish Ministers or Scottish public authorities decide to postpone complying with any such duty they must publish a statement to that effect either on or before the date by which the report is due or as soon as reasonably practicable after the date. Where the Scottish Ministers or a Scottish public authority have made a decision to postpone complying with a duty, they must comply with the duty as soon as reasonably practicable.
14. The postponement of compliance does not relate to any duty contained in the Coronavirus (Scotland) Bill or to accounts or associated documents required under section 19 or 20 of the Public Finance and Accountability (Scotland) Act 2000. Ministers are able to modify by regulations the effect of the Public Finance and Accountability (Scotland) Act 2000 as it applies to accounts that are required under section 19 or 20 of that Act. This provision is contained in Schedule 6, part 5 paragraph 16.
15. It remains essential, however, that the Scottish Government and its sponsored bodies are able to report to the Scottish Parliament on the stewardship of our resources. These activities are continuing in respect of the financial year 2019-20 but the pace has been slowed. Work is under way to investigate ways that year-end and annual accounts procedures can be completed that are less burdensome on business areas and sponsored bodies, subject to agreement with audit authorities. This will take into account the need for consistency of approach across all public bodies and may require

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

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

Publication of documents

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

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

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

Amendments to the Freedom of Information (Scotland) Act 2002

23. During the passage of the Coronavirus (Scotland) Bill, The Minister for Europe and International Development said:

“The Government recognises that transparency is of paramount importance in the current circumstances.”

24. The information rights enshrined in the Freedom of Information (Scotland) Act 2002 (“FOISA”) are of the highest importance for ensuring the openness and transparency of public services in Scotland during the present emergency.

25. However, as the Scottish Information Commissioner (“the Commissioner”) put it in his briefing on the Bill:

“The circumstances that public authorities across Scotland currently face are unprecedented, and we are wholly sympathetic to the pressures that the COVID-19 pandemic will be placing on public institutions, structures, resources and staff. Meeting the current 20 working day FOI timescales in circumstances where premises are closed, where information may be inaccessible, where staff are absent, or where organisations face unprecedented demands for essential services will undoubtedly create significant challenges for many organisations.”

26. The Coronavirus (Scotland) Act 2020 therefore makes a number of temporary modifications to FOISA which will ‘sunset’ after the Covid-19 emergency period. These are designed to give Scottish public authorities (within the meaning of FOISA) the breathing space that they need to respond to the coronavirus outbreak, while ensuring that information rights are protected.

Changes to the law

27. The Act does not amend the duty on public authorities to continue to respond promptly to requests for information.

28. The measures in the Act:

- extend the upper time limit for responding to requests and reviews under FOISA from 20 working days to 60 working days;
- enable the Commissioner to take into account the effect of coronavirus on authorities when deciding appeals where authorities have failed to comply with the timescales for responding;
- enable authorities and the Commissioner to issue formal notices by electronic means.

29. Additionally, the Act confers powers on the Scottish Ministers to introduce an ability for authorities to extend deadlines further. These powers may be exercised if the circumstances change and it is necessary to do so. The Ministers must consult with the Commissioner before exercising the powers.

Environmental Information (Scotland) Regulations 2004

30. These temporary measures apply only to FOISA. The Environmental Information (Scotland) Regulations 2004 (“EIRs”) are unaffected by them.

31. Accordingly, EIRs requests and reviews continue to have to be dealt with as soon as possible, and no later than 20 working days after receipt – although it remains possible to extend the deadline for EIRs requests by a further period of up to 20 working days, if the volume and complexity of the information requested makes it impracticable to respond within the original 20 working day period.

Changes come into effect from Tuesday 7 April

32. From Tuesday 7 April, the temporary upper time limit of 60 working days will apply to all requests and reviews under FOISA, including ongoing requests and reviews.

Actions for Scottish public authorities

33. Scottish public authorities will wish to:

- make their FOI case handlers aware of these changes
- update internal systems, templates and guidance accordingly

Does this mean that all requests and reviews will take longer to answer?

34. No. The duty to respond promptly is unaffected by the Act. In many cases, this will mean that authorities continue to respond well in advance of the 60th working day, just as they responded well in advance of the 20th working day previously.

Further information about what the changes mean for Scottish public authorities

35. The Scottish Information Commissioner has [undertaken to publish guidance](#) for Scottish public authorities in the near future.

36. The Scottish Government's Freedom of Information Unit leads on FOI policy issues. For further information about the changes in the Act, **contact:** Graham Crombie, Head of Policy and Casework, Freedom of Information Unit, Scottish Government, Email: Graham.Crombie@gov.scot

Sector specific measures included in the Act

37. Besides these general provisions, designed to ease pressure on all public services, the Act contains a large number of measures to address specific challenges and issues arising from the national emergency affecting various parts of Scottish society and the delivery of public services

38. Annex A provides a full summary of measures in the Act. Annex B provides a summary of Scottish Government guidance in relation to specific measures and contact information for Scottish Government colleagues who may be able to provide further information.

Ongoing review of the measures

Expiry of provisions of the Act

39. There could be issues that will need resolved when any of the Act's provisions expire. For example, where the Act extends the deadline by which an application has to be made, what happens to existing applications when the deadlines are extended?

40. Section 16 of the Act allows the Scottish Ministers to set out what should happen in such situations, by making incidental, supplementary, consequential, transitional, transitory or saving provision to deal with the legal consequences of provisions of the Act expiring.

Review and reporting on the Act

41. Section 15 of the Act requires Scottish Ministers to produce a report on the Act every two months. That report must set out the results of a review by the Scottish Ministers of whether the Act's provisions remain necessary.

42. The report must also set out how any powers in the Act have been used and whether the Scottish Ministers continue to consider those powers necessary.

Input required from local authorities and public bodies

43. In implementing, reviewing and reporting on the Act, the Scottish Ministers will rely on the perspective of, and information provided by, local authorities and public bodies.
44. Local authorities and public bodies should keep their Scottish Government contacts informed:
- if they have any concerns about the provisions of the Act,
 - if they consider that the provisions of the Act are not, or may shortly become, unnecessary or disproportionate,
 - if they think that there may be the need to suspend any provisions of the Act temporarily,
 - if they have concerns about the practical impact of the expiry of any provisions in the Act.
45. Local authorities and public bodies' Scottish Government contacts will, in turn, keep them informed of how the Scottish Government is going about reviewing and reporting on the provisions of the Act, and of its plans for the Act's expiry.
46. For further information about the provisions of the Coronavirus (Scotland) Act 2020 as a whole, **contact:** Luke McBratney, Coronavirus (Scotland) Bill Coordination Team, Scottish Government, Email: Luke.McBratney@gov.scot

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

Changes across both private and social rented sectors:
(see also Annex B, pages 11-13)

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

Measures to alleviate pressures on public services, business and consumers

1. Extended protection for those in debt from creditor enforcement action. (see Annex B, page 13)
2. Suspending timescales set out in the Social Security (Scotland) Act (for example deadlines by which clients are required to apply for assistance, request a redetermination and bring appeals), and extending the period allowed for Ministers to make a redetermination before a client becomes entitled to appeal to the Tribunal. (see Annex B, page 13-15)
3. Giving equivalent protection against eviction to those with commercial leases as is in the UK Act. (see Annex B, page 15-16)
4. Allowing local authorities to exclude people from meetings where required by statute (on protecting public health grounds). (see Annex B, page 16)
5. Delaying ballots for Business Improvement Districts and, possibly extending their lifespan. (see Annex B, page 16)
6. Suspension of time limits in the Anatomy Act to relieve pressure on medical schools. (see Annex B, page 16-17)

7. Easement of local authority requirements under s.13ZA of the Social Work (Scotland) Act in order to provide community care services, including moving the adult to residential accommodation, to protect vulnerable adults - this provision will only come into force by regulations when and if Ministers approve its use, which will be strictly only when evidenced as being absolutely necessary. (see <i>Annex B, page 17</i>)
8. Amendments to extension of time limits in Adults with Incapacity (Scotland) Act to help protect vulnerable adults. (see <i>Annex B, page 17-19</i>)
9. Temporary adjustment of FOI to allow public bodies to devote additional resources to COVID response. (see <i>main note</i>)
10. Allowing documents made public for inspection to be published on the internet rather than in physical locations e.g. a local authority office or library. (see <i>main note</i>)
11. Extend the duration of planning permission for applications which are due to expire in the next 6 months. (see <i>Annex B, page 19-20</i>)
12. Changes to alcohol and civic government licensing legislation to provide necessary flexibility for Licensing Boards, licensing authorities, applicants and other parties. (see <i>Annex B, page 20-21</i>)
13. Extend the period of validity of advance notices and allow electronic communication of applications to the property registers. (see <i>Annex B, page 21</i>)
14. End the current muirburn season early and suspend muirburn for the period the Act is in force. (see <i>Annex B, page 21-22</i>)

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

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

1. Extension of certain statutory time limits in criminal proceedings
2. An additional exception to the rule that hearsay evidence is inadmissible in criminal proceedings
3. Sheriffs and summary sheriffs to have Scotland-wide jurisdiction, <u>only</u> for first appearances from police custody and any continuation of those proceedings up until a not guilty plea is tendered or full committal (in indictment cases).
4. Changes to Parole arrangements (see <i>Annex B, page 23-24</i>)
5. Powers to allow Ministers to seek Parliament's approval for the emergency release of prisoners, consistent with ensuring public safety (see <i>Annex B, pages 24-25</i>)
6. Enabling court and tribunal attendance by electronic means
7. Increased use of electronic signatures and electronic transmission of documents

8. Extending time limits for unpaid work in Community Payback Orders by 12 months; enabling the postponement of certain community orders; and enabling the variation of certain community orders. (see <i>Annex B, page 22-23</i>)
9. Expand alternative to prosecution (increase maximum value of a fiscal fine)
10. More flexibility for children's panel composition (see <i>Annex B, page 25</i>)
11. Relax timescales for child assessment orders (see <i>Annex B, page 25</i>)
12. Suspend 2 nd day hearing in child protection orders (see <i>Annex B, page 25</i>)
13. Dispensing with need for personal appearance at children's hearings (see <i>Annex B, page 25</i>)
14. Preventing 2011 Act Orders from lapsing (see <i>Annex B, page 25</i>)
15. Extending maximum periods of interim orders in respect of children (see <i>Annex B, page 25</i>)
16. Removing maximum limit on foster placements (see <i>Annex B, page 25</i>)
17. Relaxing timescales for kinship placement reviews (see <i>Annex B, page 25</i>)
18. Allowing interim legal aid payments to be made to solicitors (see <i>Annex B, page 25</i>)

General measures

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

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

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

Preventing Evictions

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

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

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

Eviction notice periods

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

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

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

Eviction grounds being made discretionary

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

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

Power to extend the period the temporary changes are in force

The changes will be in force until 30 September 2020. Alongside being able to amend the notice periods that apply up to a maximum of 6 months, Scottish Ministers also have the power to extend the changes for two further 6 month periods. This gives Scottish Ministers the necessary flexibility to adapt to the uncertainty caused by the pandemic

Error in notices

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

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

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

Pauline.Brice@gov.scot

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

Email: Yvonne.Gavan@gov.scot

Measures to alleviate pressures on public services, business and consumers

Extended protection for those in debt from creditor enforcement action

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

The increased moratorium period should:

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

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

For further information, visit the Accountant in Bankruptcy website:

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

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

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

Timescales for making applications

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

Redeterminations and Appeals

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

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

Further Information

Requests for re-determination

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

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

Social Security Scotland timescales for completing re-determinations

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

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

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

Requests for Appeals

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

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

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

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

Best Start Grant/Young Carer Grant/Funeral Support Payment

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

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

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

Giving equivalent protection against eviction to those with commercial leases as is in the UK Act

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

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

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

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

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

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

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

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

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

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

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

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

The Scottish Towns Partnership is engaging with Business Improvement Districts regarding the impact of this measure.

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

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

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

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

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

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

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

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

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

This is one of the few provisions that will come into force when and if Ministers approve its use by invoking regulations. This will be strictly only when evidenced as being absolutely necessary. These provisions can come into force at different times geographically to address need.

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

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

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

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

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

These provisions will come into force the day after Royal Assent.

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

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

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

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

These provisions will come into force the day after Royal Assent.

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

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

The amendment ensures that when these provisions are in force, the guardianship does not expire and require a renewal to be made, with the accompanying work that would entail. This is intended to preserve the work capacity of professionals for urgent work, whilst ensuring that the adult still has a guardian to look after their welfare.

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

These provisions will come into force the day after Royal Assent.

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

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

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

These provisions will come into force the day after Royal Assent.

Monitoring of use of provisions

The Mental Welfare Commission have agreed to monitor the use of these emergency powers.

Further Guidance

More detailed guidance will be provided, in particular covering the amendments to s.13ZA.

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

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

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

The Bill defines the “emergency period” as the period of 6 months after the Bill comes into force, and the “extended period” as the period of 12 months beginning with the date on which the provisions come into force.

The same applies to planning permission in principle. However, as well as the overall duration, attention also has to be paid to the time limits for applying for approval of

matters specified in conditions (AMSC) attached to a planning permission in principle. In relation to applications for AMSC, if the last date for making an application for an AMSC is within the emergency period then the time limit for making such an application is to the end of the extended period.

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

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

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

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

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

The changes made

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

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

part of the Board itself and the Act makes provision in this area where this arises as a result of the Coronavirus outbreak.

Necessity and urgency

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

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

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

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

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

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

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

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End the current muirburn season early and suspend muirburn for the period the Act is in force.

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

Muirburn is the controlled burning of heather, gorse bushes and grasslands as a land management tool. Muirburn is not an activity that can be considered essential to the

economy in the current emergency. Furthermore, although the risk of wildfire from muirburn is low, it places a small additional risk that our emergency services may be called upon, unnecessarily, to deal with out of control or unintended fires or to treat those that may be injured by such fires.

Effect of the provisions in the Act

- The Coronavirus (Scotland) Bill has the effect of ending the current muirburn season earlier than its scheduled date of 15 April.
- The suspension of the muirburn season is in place for the relevant period that the Coronavirus (Scotland) Bill is in force. The Bill will initially be in force for six months.
- This means that muirburn is suspended until at least the end of September 2020.

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

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

Community Orders

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

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

A restriction will also be placed on courts for the period during which the legislation is in force, to ensure that any new unpaid work or other activity requirements have a time limit of at least 12 months from the point of imposition.

These measures will allow justice social work to suspend all unpaid work programmes for the duration of the pandemic without affecting the ability of individuals to complete their hours within court-directed timescales – and we would encourage all local authorities to now do so, if this decision has not already been taken.

It should be noted that, under this measure, a duty has been placed on local authorities to inform those subject to the relevant CPOs of the changes made by this

provision (i.e. that the period within which the unpaid work or other activity requirement has been extended, and by how much).

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

It is hoped that the above measures at (i) will be sufficient in allowing justice social work to continue to facilitate all remaining orders. Nonetheless, should the situation with COVID-19 significantly deteriorate, it may become necessary to take further action in order to allow justice social work to focus on cases presenting the highest risk. The legislation therefore gives the Scottish Ministers the power to postpone certain orders (CPOs and DTTOs), or requirements contained in those orders (including by reference to type of offence or individual), for a specified period – essentially pressing pause on these until such time as the situation improves. On the expiry of the specified period, the orders or requirements would progress as if no time had elapsed since the postponement was put in place (but obviously moving forward relevant timescales/deadlines to account for this), allowing the requirements to be carried out once restrictions related to the pandemic are lifted. Should this power be used, the Act places a duty on local authorities to inform those subject to the relevant orders of any changes made by this provision.

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

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

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

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Parole

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

Delegation Powers

These provisions allow the Chair to delegate the statutory functions laid out in the Prisoners and Criminal Proceedings (Scotland) Act 1993 and the Parole Board

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

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

Parole Hearings

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

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

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Release of Prisoners

Scottish Ministers have powers under the Act to consider early release of prisoners to help limit the spread of COVID-19 and to ensure our prisons can operate safely. However, it should be noted that steps already taken, such as limiting court business, are already having an impact on reducing the prison population, and we will consider whether appropriate steps can be taken via Home Detention Curfews.

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

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

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

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

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

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Allowing interim legal aid payments to be made to solicitors

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

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

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

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