

# **Business and Regulatory Impact Assessment**

# **Coronavirus (Scotland) Bill**

**March 2020**

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#### **Purpose and intended effect**

#### **Background**

The purpose of the Coronavirus (Scotland) Bill (“the Bill”) is to respond to the emergency situation caused by the Covid-19 pandemic. The Bill complements and supplements the Coronavirus Act 2020 (“the 2020 Act”), passed by the UK Parliament on 25 March 2020, and which the Scottish Parliament gave its consent to on 24 March 2020. The Bill will put in place necessary and urgent measures in order to address the threats posed by the coronavirus outbreak in Scotland.

The coronavirus outbreak is a severe and sustained threat to human life in Scotland. The Scottish Government is committed to taking all steps necessary to address that threat. A severe pandemic could infect a large proportion of the population, and the public health measures required to control and limit the spread of the outbreak will require a significant adjustment to the lives of those living in Scotland, to business in Scotland, and to the way public services are delivered and regulated.

The temporary measures included in the Bill are deemed essential to respond to this current emergency, and cover a range of measures intended to ensure that:

- renters are protected while confined to their homes;
- the justice system is able to deliver essential services;
- public services, business and consumers can still operate despite new restrictions.

The Bill contains safeguards to ensure proper oversight and accountability of the use of the powers provided within it.

#### **Objectives**

Current public health guidance requires business and public authorities to operate very differently to the way they have done until now by implementing, for example, social distancing policies, or by requiring their workforce to work from home, where possible. In addition the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI. 2020/103) (“the 2020 Regulations”) have required the closure of businesses selling food or drink for consumption on the premises, and of a wide range of other business set out in the regulations to protect against risks to public health. The 2020 Regulations also prohibit those living in Scotland from leaving the place where they live without reasonable excuse, and ban public gatherings of more than two people.

Public health guidance is likely to require some adjustment to normal life for some time, as the effort to limit and control the coronavirus outbreak continues. The requirements and restrictions in the 2020 Regulations will continue until they are terminated by the Scottish Ministers by direction, or until they expire under regulation 11 of the 2020 Regulations.

The Scottish Government considers that in order for essential public services to continue to be able to discharge their functions in the way they were intended to, some temporary changes need to be made to the way they operate and the way that they are regulated. In addition, further support and flexibility for business, and for those using public services, is necessary to reflect new restrictions, in both guidance and legislation, on the way people can live and work.

Even beyond the new restrictions on living and working in Scotland, the coronavirus outbreak has an effect on essential public services which demands a response.

The Scottish Government is committed to putting in place all necessary measures to help respond to the coronavirus outbreak. However, it is the Scottish Government's view that while these measures are essential, they are only required to respond to the current set of specific circumstances and therefore the powers under the Bill will expire six months after the Bill receives Royal Assent, except where explicit provision is made in the Bill. It will be possible for the Parliament to choose to extend the availability of these powers if the circumstances at the end of six months require it.

It is the Scottish Government's view that to ensure public services, business and consumers can continue to operate while taking account of new restrictions imposed by both this Bill and the Coronavirus Act 2020, the Bill should provide for:

- Extending the six week moratorium on debt relief;
- The prevention of evictions in the private rented and social sectors for up to 6 months;
- Giving equivalent relief to commercial landlords as is in the UK Bill;
- Delaying ballots for Business Improvement Districts (BID);
- Extending the duration of planning permission for applications which are due to expire in the next 6 months;
- Relaxing timescales for Scottish social security applications, re-determination and appeal requests and relax age limits for Best Start Grant and Young Carer Grant assistance;
- Allowing local authorities to exclude people from meetings on health grounds;
- Extending deadlines associated with responding to requests for information made under the Freedom of Information (Scotland) Act 2002 (FoISA);
- Extending the protected period provided by advance notices in the land registration system;
- Enabling digital submission of copy land registration documents to the Keeper of the Registers of Scotland

The Bill will also provide for:

- Conduct of trial on indictment
- Suspension of statutory time limits in criminal proceedings;
- Increased provision for the admission of hearsay evidence;
- Sheriffs and summary sheriffs to have Scotland-wide jurisdiction;
- Emergency release for prisoners consistent with ensuring public safety;
- Enabling remote participation by parties in proceedings before courts and tribunals;
- Increased use of electronic signatures and the electronic transmission of court and tribunal documents;
- Parole – suspension of automatic right to oral hearing;
- Expanding the ability to make interim payments to solicitors and counsel from the legal aid fund;
- Adjustments to licencing to extend time limits and provide remedy for procedural issues;
- Extending time limits for unpaid work as part of Community Payback Orders, postponing the carrying out of community sentences (esp. Community Payback Orders), and varying community sentences;
- Expanding alternatives to prosecution (increase maximum value of a fiscal fine);
- More flexibility for children’s panel composition ;
- The relaxation of timescales for child assessment orders;
- Suspension of the requirement to hold a second working day hearing in child protection orders;
- Dispensing with need for personal appearance at children’s hearings;
- Preventing Children’s Hearings (Scotland) Act 2011 Orders from lapsing;
- Extending maximum periods of interim orders in respect of children;
- Removing maximum limit on foster placements;
- Relaxing timescales for kinship placement assessments;
- Amendment to Anatomy Act to extend the statutory period for retaining bodies;
- Extending guardianships for adults with incapacity, extending the period of existing certificates to authorise medical treatment, and amending provision of services to adults with incapacity to amongst other things expedite discharge from hospital.

### **Rationale for Government intervention**

It is the Scottish Government’s view that this legislation is necessary to respond to the specific circumstances found in Scotland. It is also the Scottish Government’s view that without this legislation, public services, business and consumers would be unable to continue to operate while taking account of new restrictions imposed upon them. Therefore, this Bill will make the changes which are needed to our devolved laws in order respond appropriately to our current exceptional circumstances.

The Scottish Government considers it possible that further legislation will be required to provide the support businesses and people in Scotland need, as the pandemic develops and as its effects on our economy and society become clear.

The Bill contains extraordinary measures required to respond to an emergency situation. The Scottish Government is satisfied that all of the measures contained in the Bill are appropriate and proportionate, but it recognises that many are far-reaching and unprecedented. The Bill therefore contains the following safeguards:

- the measures in the Bill will automatically expire six months after they come into force. The Scottish Parliament may extend these measures for two further periods of six months, giving the measures in the Bill a maximum duration of 18 months;
- where a measure is no longer considered necessary, Scottish Ministers can bring it to an end earlier than on this six-monthly schedule;
- Scottish Ministers are required by the Bill to report on the continued need for the measures, and on the use of powers in the Bill, every two months.

## **Consultation:**

### **a) Within Government**

All Directorates within the Scottish Government were consulted on the measures required to respond urgently to the coronavirus outbreak in Scotland. Proposals for measures to be included in the Bill were considered against how necessary they were; whether existing legislative powers could be utilised to achieve the same effect; and how urgently the measures were required to be put in place. The provisions contained within this Bill reflect the outcome of that government-wide consultation.

### **b) Public Consultation**

Given how urgently the measures in this Bill are required as a result of the unprecedented challenges currently faced, no formal public consultation has taken place. However, the measures in the Bill reflect concerns highlighted by members of the public, key stakeholders and Members of the Scottish Parliament.

### **c) Business**

In order to respond as quickly as possible to help slow down the spread of the virus, formal consultation with business was not possible. However, measures in the Bill reflect concerns highlighted by business stakeholders.

## **Options**

Three options have been considered: i) Do nothing; ii) Take forward primary legislation to a slower timetable; iii) Take forward immediate emergency primary legislation and follow this with further legislation to a slower timetable if that is deemed necessary.

Option i) was immediately ruled out. The measures taken to respond to the coronavirus outbreak must reflect the magnitude of the challenge presented by it. Doing nothing will not help slow down the spread of the virus and will leave

businesses and members of the public with no assistance from the Scottish Government on matters which could be addressed.

Option ii) was ruled out as certain measures in the Bill must be implemented immediately if they are to be effective.

Option iii) is the Scottish Government's selected option as it addresses necessary measures as a matter of urgency while retaining the possibility of making additional primary legislation at a later stage if it is required.

### **Immediate primary legislation**

#### Sectors and groups affected

A wide range of sectors and groups will be affected as the Bill proposes the introduction of time-limited powers connected to the Scottish justice system, protection for those renting accommodation in Scotland, business, public services and consumers. These include, but are not restricted to:

Creditors

Debt Advice Agencies

Accountant in Bankruptcy

Food supply chain suppliers

Private and Social landlords

Letting agents

Adult and Children's Social Care

Social Security Scotland

Social security claimants

Licensing Boards

Retailers who sell alcohol and holders of licences under the Civic Government (Scotland) Act 1982

Children's Hearings Scotland (CHS)

National Convener of CHS

Scottish Children's Reporter Administration (SCRA)

Principal Reporter of SCRA

Scottish Legal Aid Board (SLAB)

Police Scotland

Third Sector Organisations

Local Authorities

Children's Secure Accommodation Providers

Scottish Prison Service (SPS)

Scottish Courts and Tribunal Service (SCTS)

Crown Office and Procurator Fiscal Service (COPFS)

Solicitors and counsel

All public bodies subject to FoISA

## **Benefits**

### Children's Hearings

The Bill will enable the continuation of critical legal proceedings to keep children safe by relaxing the minimum composition requirements of children's hearings. The Bill will preserve necessary independent decision-making in respect of cases where compulsory intervention in the lives of children and families may be required. It will promote swifter, more efficient processing of hearings decision notifications by enabling electronic authentication. It will enable senior officers to adapt, extend or vary their statutory functions with more agility to respond to the developing Covid-19 circumstances and its effect on their workforces. It will prevent the lapsing of lawful orders protecting children because hearings proceedings on a given day might have to be cancelled. It will promote improved resilience and physical distancing by disapplying rights and duties on children, families and partner agencies to attend in person. It will provide additional support and flexibility to critical services provided by kinship and foster carers.

Covid 19 will mean that there will be less availability of staff and children's panel volunteers to deal with children's hearings and the number of hearings generated by child protection orders (CPO). There may be many good reasons why there cannot be a review hearing lawfully constituted within 72 hours, even remotely. The secure accommodation may become affected by the virus in that period, preventing the child being able to be involved in a hearing even remotely in an emergency. There will also be significant challenges with convening a lawful children's hearing within existing timescales in the peak COVID-19 period. There may be a high number of children who need to be moved from their current kinship, foster or residential home in an unplanned way due to illness – the resilience and availability of alternative out-of-authority emergency placements will therefore be impacted and authorities may have more difficulty in sourcing them. These provisions will ensure the most vulnerable children are protected during these unprecedented times.

### Private and Social Rented Sector – protection from eviction

More tenants in both the private and social rented sectors are finding themselves in financial difficulty due to the current outbreak and are unable to meet their obligations under their tenancy agreement. Under current housing legislation, this places them at 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. More broadly, there is also a need to prevent the unnecessary movement of tenants during this unprecedented situation to support measures to inhibit the progress of the virus. These provisions will ensure that tenants are protected from eviction for a period of up to 6 months.

### Debt relief

Individuals facing unsustainable debt will be reassured that they have full protection from creditor action whilst they consider how best to deal with their debt.

### Business Improvement Districts (BIDs)

BIDs can have a vital role to play as part of a local Covid-19 Resilience response. They have generated millions of pounds in private investment, they can provide vital support to local businesses during the crisis, they have localised intelligence, have

ideas on COVID-19 mitigation, and can be deployed as critical infrastructure during and post crisis.

### Social Security

These measures relax the timescales for clients to seek a redetermination of assistance for Social Security Scotland to make a decision on such a request and for clients to seek an appeal to the Social Security Chamber of the First-tier Tribunal for Scotland about a decision made by Social Security Scotland. This will provide additional time for both clients and Social Security Scotland given the likely reduction in staff capacity and the implications this will have on the Agency's ability to make decision in the original timescales. The provisions also require Social Security Scotland to make redeterminations as soon as reasonably practicable.

There are also provisions to allow for late applications across all forms of assistance where the lateness is due to Covid-19. This ensures that Social Security Scotland clients are not disadvantaged and are able to claim assistance to which they are entitled to and which they may have missed out on if late applications were not allowed. These provisions should help mitigate the potential impact of Covid-19 on social security clients including those from vulnerable and disadvantaged groups, such as young carers.

### Publication requirements

Where any requirement exists for a public authority to publish information in a particular format, or to make it available for inspection in a particular manner, the Bill will allow them instead to make it available online. This will allow business to continue while offices and libraries are closed. Particular examples have been identified in terms of information about Council meetings and committees, in the planning system and for environmental assessments.

### Provision related to the functions of the Keeper of the Registers of Scotland

The benefits of the provisions on property registration are twofold. Firstly, the extension of the effective period of an advance notice will protect the rights of those people (and lenders) whose transactions were 'in flight' at the point public health guidance on social distancing required the application record to be closed. Secondly, the provisions on electronic submission of deeds will allow those transactions to be registered; meaning individuals can obtain real rights in property.

Taken together, the provisions will allow the property registers to continue to function in the period where social distancing guidance is in place. This will allow people who transact in this period to achieve the benefits offered by registration in the property registers; namely creation of a real right enforceable against third parties and warranty of title (for Land Register applications) given by the Keeper.

The provisions of the Bill seek to extend the protected period of certain advance notices until 10 days after the full re-opening of the Keeper of the Register of Scotland's property registers. The extension of the advance notice protected period, will prevent purchaser from being put at risk, and will allow in flight transactions to proceed to completion in line with published Law Society of Scotland guidance.



The Bill provides for a copy of a traditional document (wet-signed paper document) to be submitted for registration to the Registers of Scotland through digital means, such as email or via an online portal. This will provide further certainty for transacting parties and allow registration to proceed under social distancing restrictions.

### Anatomy

There is some impact on business and the public sector. There are contractual arrangements between universities, funeral directors and crematoria for arrangements to cremate bodies which have been donated for anatomical examination. Because of the pandemic there is the potential for delay in bodies being uplifted and cremated. As these arrangements are delivered under contract the service is likely to be deferred as services of funeral directors and crematoria are reprioritised.

### Justice

These provisions are part of a set of measures contained within emergency legislation, aimed at helping the Scottish justice system cope with and respond to the changing demands caused by the coronavirus outbreak.

The scale of changes that our justice partners will face is unprecedented, and will continue to evolve at pace. The emergency legislation covers a wide number of measures, but the one thing they have in common is that they are aimed at easing pressures on a justice system that may come under significant strain and need to respond rapidly.

The provisions within this Bill aim to ensure the Rule of Law and Access to Justice are maintained throughout this pandemic and into recovery, whilst adhering to the relevant public health guidance.

Provisions are aimed at ensuring that Police Scotland, COPFS, Scottish Courts and Tribunals Service, the Scottish Prison Service and the Parole Board for Scotland, are able to continue to operate during this pandemic.

In order to respect the need for social distancing and the reality that the institutions named above will face acute staffing pressures throughout the course of the pandemic, provisions are designed to ensure the need for physical attendance at court or tribunal is removed wherever possible; and electronic means are deployed. Greater flexibility is also built in to allow for solemn trials to proceed without juries as an emergency and temporary measure; and in terms of applicable time limits. If there were to be no solemn trials throughout the COVID pandemic this could have a substantial financial impact on the criminal bar. The measures proposed in this Bill would enable some trials to go forward at an appropriate time which would lessen this financial impact.

Interim payments to solicitors and counsel from the legal aid fund aim to ensure such providers of legal services maintain viable businesses throughout and beyond this pandemic.

The extension of timescales for unpaid work and the potential postponement or alteration of certain community orders will reduce the demands on Criminal Justice

Social Work (CJSW) Services and courts, thereby increasing the capacity of social work services to manage higher risk cases, and reducing the need for breach or variation applications to be made to courts.

Third sector organisations support delivery of a range of community justice interventions, in collaboration with local authorities and other partners. The extension of unpaid work and potential postponement or alteration of orders is likely to reduce demand, though support on a non-statutory basis will be likely to continue subject to service provision during the coronavirus pandemic, and it may be that third sector organisations are relied upon to address support needs

### Planning & Architecture

The Bill provides that where a full planning permission or planning permission in principle would expire during the relevant period then that permission should not lapse for a period of 12 months from the date on which the provisions come into force, irrespective of that development having not been commenced. The permission would only lapse if development has not commenced before the end of the 12 month period.

This provides certainty to the development sector where they may be unable to enact their permissions while the current restrictions are in place.

It is also important that when the current restrictions on movement are relaxed, developers are able to pick up where they left off, continuing with construction and having a pipeline of sites ready to move onto once current sites are completed.

Another key benefit of this is to reduce the burden on planning authorities who may otherwise be inundated with applications (under Section 42 of the Town and Country Planning (Scotland) Act 1997) seeking to amend a condition which would in effect give them a new permission.

### Licensing

Giving greater flexibility to the operation of different licensing regimes including alcohol licensing will benefit businesses who sell alcohol as it will minimise the changes that rights to sell alcohol will lost through no fault of business.

### Adults with Incapacity

The Bill will extend the period of time for which guardians are appointed. This will avoid the need to make applications for renewal of powers for those guardianships that will expire during the period of crisis. This will take the pressure off those professionals involved in this during this time, including mental health officers, doctors, solicitors and the courts, enabling them to concentrate on essential business. The same applies to extension of the period of time for which s.47 certificates for medical treatment are authorised.

The amendments to s.13za of the Social Work (Scotland) Act 1968 will allow local authorities to move adults speedily out of hospital wards for their own safety, and to free up bed capacity, in advance of an influx of patients with Covid -19. Adults will be moved to the most appropriate location available for the needs, which in most case is expected to be to a move home.

### Freedom of information

These provisions extend the timescales for Scottish public authorities to respond to requests for information and requirements for review. This ensures that authorities do not have to choose between focusing resources on tackling the coronavirus outbreak and complying with their statutory duties to provide information under the Freedom of Information (Scotland) Act 2002.

### **Costs**

The future costs associated with the certain provisions of the Bill cannot be predicted with certainty at this point. However, estimated costs have been provided below.

### Children's Hearings/Panels

There are no anticipated extra costs flowing from these proposals as they provide legislative authority for operational and administrative solutions planned and implemented already by the responsible agencies. No new proceedings will be required – Ministers propose that some existing proceedings are being deleted, and others are rescheduled. No additional costs flow from disapplying rights and duties to attend proceedings in person – technological solutions enabling remote participation are in place.

### Private and Social Rented Sector – protection from eviction

The costs associated with the provisions outlined in this Bill to protect tenants from eviction are dependent on the individual circumstances of tenants and landlords; the severity and expected duration of the outbreak; and the extent to which they can access UK and Scottish financial support being made available.

- Private sector tenants – the Scottish Government does not expect any additional costs for tenants from extending the notice to leave period landlords must give a tenant when seeking to repossess the property.
- Private sector landlords – for the majority of the grounds for repossession the Scottish Government does not anticipate that extending the notice a landlord must give the tenant will have a significant additional cost implication. However, for landlords seeking to repossess a property due to rent arrears, there are likely to be cost implications due to loss of income from unpaid rent. Approximately 94% of registered landlords in Scotland have only one property and the average rent for a 2 bed property (the most common property size) is £668 a month (based on advertised rents). Therefore where a tenant is unable or does not pay rent for the extended period, an average landlord in these circumstances may lose an additional £3,340 over the longer notice period.
- Private sector letting agents – Similarly the costs implications for letting agents relating to additional administration costs (which will depend on the size and processes of individual agents) plus loss of income where a tenant is unable, or unwilling, to pay their rent. The management fees agents charge are usually based on a percentage of the monthly rent paid. However, the Scottish Government considers that the financial support available to tenants should allow most tenants to continue paying rent and therefore helping to cover agents costs in the normal way.
- First-tier Tribunal for Scotland – provisions to make all repossessions cases discretionary may place additional administration costs on the Tribunal if this

were to increase the length of time a case takes to determine. During 2018 -19 the Housing and Property Chamber received 3781 applications across 10 jurisdictions, and 3196 applications were closed during the year. The vast majority (85%) of applications received fell within the new private rented sector jurisdiction. Almost half (43%) of all applications received were for eviction, while a further 31% were applications for civil proceedings in relation to private tenancies. The complexities caused by the current postponement of all cases in the Tribunal and the uncertainty about the nature of measures to deal with a backlog of cases mean that the Scottish Government is unable to project costs over the next two financial years. However, given the proportion of cases that relate to evictions, if these attract additional costs due to prolonged processing or hearings, the Scottish Government would expect to see costs rise. Funding to the SCTS in respect of private rented sector cases was £2,583k in 2018-19 and £3,942k in 2019-20. Case numbers are projected to rise further in 2020-21.

- Contractors (private rented sector) - Landlords and letting agents employ contractors to carry out maintenance and other essential services which are usually funded out of rental income. Loss of rental income could potentially affect a landlord's capacity to contract work. However, the Scottish Government considers that the financial support available to tenants should mean most tenants can pay their rent, although there may be some delay while this financial support is made available and that routine work will be delayed or postponed due to the Coronavirus pandemic.
- Social sector tenants – the Scottish Government does not expect any additional costs for tenants from extending the notice for recovery of possession landlords must give a tenant when seeking to repossess the property.
- Social sector landlords – for the majority of the grounds for repossession the Scottish Government does not anticipate that extending the notice a landlord must give the tenant will have a significant additional cost implication. However, for landlords seeking to repossess a property due to rent arrears, there are likely to be cost implications for those landlords due to loss of income from unpaid rent. An average weekly rent for a social rented property was £79.00 in 2018/19. Therefore where a tenant was unable or did not pay rent for the extended period, a landlord based on the average weekly rent would lose an additional £2,054 over the longer notice period. In 2018-19 the rent arrears on all Local Authority houses totalled £74 million, representing 6.2% of standard rental income from these dwellings. If these arrears increased by 10% there would be an additional cost of £7½ million. Costs to Registered Social Landlords are likely to be of the same order as costs to Local Authorities, making a rough estimate of total cost across the whole sector of £15 million.
- Contractors – Registered Social Landlords (RSLs) employ contractors to carry out maintenance and other essential services which are funded out of rental income. Loss of rental income could potentially affect an RSL's capacity to contract work. However, the Scottish Government considers that the amount of rent lost is not likely to have a significant effect on contracts and many programmes will, in any case, be delayed or postponed due to the Coronavirus pandemic.

### Debt relief

The direct costs of implementing the extended moratorium, because this is simply an extension of an existing scheme, will not be significant.

### Provision related to the functions of the Keeper of the Registers of Scotland

In respect of those provisions contained within the Bill related to the functions of the Keeper of the Registers of Scotland, additional functionality will be introduced to the Keeper's existing online services. RoS anticipate initial development costs of between £165,000 and £330,000. Operationally, costs are expected to be neutral with costs relating to staff training and stakeholder awareness raising expected to be offset by potential savings realised from electronic submission and not handling physical mail. For users of the services (primarily the legal profession) any additional costs incurred through submitting electronically will likely be offset by the savings from not using a mail service.

### Justice measures

The costs associated in not bringing forward the provisions within this Bill relating to Justice whilst combating the coronavirus outbreak may result in detriment beyond monetary considerations. Such provisions are designed to ensure the Rule of Law and Access to Justice continue in this time, by allowing all those within the Justice system to operate as efficiently as possible under the restrictions brought about by the coronavirus outbreak.

The Scottish Courts and Tribunal Service, COPFS and Local Authorities may incur some limited costs as a result of the provisions in this Bill. There is likely to be some impact on the Scottish Courts and Tribunals Service if certain community orders are postponed. In particular, there will likely be an increased workload for the courts and tribunals immediately post-crisis, in having to deal with procedures such as applications and hearings, associated with orders which have been suspended for a period of time in addition to those new orders being created once the courts and tribunals have returned to normal operation.

There is a possibility of increased workload for organisations linked to the delivery and oversight of community orders post-crisis, in particular third sector bodies.

In respect of expanding the ability of the Scottish Legal Aid Board (SLAB) to make interim payments to solicitors and counsel from the Legal Aid Fund, SLAB considers this legislation to be cost neutral. Such provisions will only facilitate that fees that are liable to be met from the Legal Aid Fund are paid sooner than they would be otherwise. In the short term monies paid from the Fund will increase, but impact in the longer term will be negligible. There will be mechanisms to recoup monies back to the Legal Aid Fund, should erroneous claims or overpayments result from the extended interim payment provisions. The Scottish Government will monitor the impact of this.

The ability for criminal and civil court and tribunal procedural documents and warrants to be transmitted and signed electronically will likely incur limited costs. Most of those working across the justice system will have access to corporate IT systems and no new kit is envisaged at this stage for electronic transmission and signatures.

There may need to be further consideration for remote participation as it is unlikely that officers and judges are appropriately equipped to run fully-remote proceedings. This will have an impact on when these provisions can be put in place, and capital outlay is likely to equip other locations, such as custody centres, for remote hearings. It should be noted that some of this expenditure is already expected as part of the overall modernisation of the justice estate.

However, on balance these new provisions provide much higher levels of business resilience to the justice sector to conduct business electronically and remotely where possible. There will be issues for the network, particularly corporate VPNs, but these have been and continue to be tested by partners – particularly SCTS.

The suspension of statutory time limits for a period of 6 months may result in some short term savings to COPFS. Such provisions may result in an increase in persons detained by the Scottish Prison Service, however other provisions within this Bill, and the ability to release low risk individuals on bail, should negate this.

The expansion of alternatives to prosecution options may result in some short term “one off” costs to COPFS attributable to resourcing and staffing costs to implement and test the necessary changes of this provision. Although this could result in reduced costs arising from fewer court proceedings, and the use of virtual or remote proceedings where appropriate. This is likely to result in fewer receipts for witness and jury expenses, for example.

By increasing the power of the Court in relation to admissibility of hearsay statements under section 259 of the Criminal Procedure (Scotland) Act 1995 there may be an increase in administrative costs associated with the relevant procedure, this may be offset by a reduction in witness expenses.

Allowing sheriffs and summary sheriffs to exercise a Scotland-wide jurisdiction in relation to persons appearing from police custody, with remote attendance from the Police Scotland centralised custody suites or appearance at a custody court local to the facility where they are being held may result in some additional cost to Police Scotland in the coordination and facilitation of the safe movement of prisoners, though this results from the Police Scotland contingency plan for custody during the pandemic, which these provisions are intended to facilitate. There is no anticipated cost to the Scottish Courts and Tribunals Service.

The establishment of a new power for emergency release for prisoners, modelled on current UK Government powers under section 32 of the Criminal Justice Act 1982 will likely result in negligible costs. Such costs associated with routine prisoner release are already accounted for within the Scottish Prison Service budget. It is anticipated that the provisions of the Bill will lead to an increase in costs in some areas for the Scottish Government but a net decrease in the overall cost associated with electronic monitoring. These expected savings would fall to the Scottish Government. The Scottish Government contracts with an external service provider for the delivery of the electronic monitoring service, the cost of which is met out of central budgets. Every short sentence prisoner has the right to seek support from their local authority after their release, to provide assistance for their reintegration after release from prison, for up to 12 months after their release. A rapid increase in

individuals leaving prison may create a surge in the number of individuals eligible to seek throughcare support from their local authority. But given the variation in service delivery, and the lack of separate budget arrangements, it is not possible to anticipate a potential cost.

By enabling the ability to postpone the carrying out of, and completion of, community sentences (primarily Community Payback Orders) there will likely result in an increase in workload on the Scottish Courts and Tribunals Service immediately post-crisis. A duty will also be placed on local authorities to contact individuals subject to community orders, informing them of any changes to their orders.

A reduction in the number of oral parole hearings required, the carrying on of those which do take place via technology rather than being carried out face-to-face, the provisions for the functions of other Chair to be carried out by another member if that person is unavailable, and the ability to ensure functions of the Chair can be delegated to others, so as the parole process can continue if there are less members/others able to take part, will likely result in no additional costs.

#### Planning & Architecture

The Scottish Government does not expect this measure to lead to any additional or increased costs.

Currently, if an applicant wished to enact their permission they would either have to commence development, satisfy necessary conditions or apply to vary a condition which in effect grants them a new permission with a new timescale. The fee for varying a condition is currently £202, however this does not currently cover the full cost of carrying out the determination of the application. Varying a condition requires the full reassessment of the application due to the effect of a new permission being granted.

Extending the duration of existing planning permissions will not incur any costs for either applicants or planning authorities where the development is commenced within the 12-month period. It will provide savings where an applicant would otherwise need to apply to vary a condition in order to deal with delays caused by the coronavirus emergency. It will also free up time for authorities to focus on responding to other important issues raised by the current situation.

#### Business Improvement Districts (BIDs)

The extension of BID periods will continue the current levy arrangements on ratepayers, though revenue collection may drop due to economic circumstances. Cabinet Secretary for Communities & Local Government has approved up to £1m from the £40m Stronger Communities Fund towards a BID Resilience Fund. This will cover the period from April to October 2020, after which the requirement for funding will be reviewed.

#### Social Security

There are no anticipated extra costs of these proposals as they provide an operational and administrative solution and do not impact on the level of assistance that a client is entitled to receive.

### Publication requirements

The change to online provision of information is not expected to impose any additional costs. All public bodies have websites and the vast majority of their documents are already published online.

### Adults with Incapacity

The Scottish Government does not expect there to be any additional costs as a result of the policy amendments. Guardianship and s.47 certificates will be extended for the emergency period, but renewal applications for guardianships and authorisation of new s.47 certificates will have to be undertaken once the provisions are switched off. The same is for s.13za amendments. The Scottish Government anticipates that most adults moved under the amendments to this section will have guardianship applications in process.

### Freedom of information

The extension of timescales for providing information is not expected to impose any additional costs. Scottish public authorities will still have to respond to requests as they do at present, but they will be able to do so over a longer period of time where that is appropriate.

### **Scottish Firms Impact Test**

As already noted, the urgency with which this Bill is being brought forward has not allowed for any consultation with Scottish business or consumers.

### **Competition Assessment**

#### Private and Social Rented Sector – protection from eviction

As the provisions to protect tenants from eviction will apply equally to all private and social landlords, it is unlikely to have any impact.

### **Consumer Assessment**

#### Private and Social Rented Sector – protection from eviction

Provisions to protect tenants from eviction and to enable the First-Tier Tribunal for Scotland (Housing and Property Chamber) to have discretion to consider the full facts of the case when determining whether to grant a repossession order, provide increased protection for consumers during the current outbreak.

### **Test run of business forms**

There is no current need for the test run of business forms.

### **Digital Impact Test**

There are a number of provisions that enable the use of electronic signatures and transmission of documents, particularly for the purposes of continued operation of the courts and tribunals in Scotland. It is expected that technology already exists to enable the use of electronic signatures and the transmission of documents but this



will likely involve new operating policies and procedures e.g. for the electronic application of warrants and personal service of documents.

The biggest impact is likely to be seen in the use of remote attendance to court and tribunal hearings to reduce the close proximity of justice workers, legal representatives and the public. In the immediate term, these provisions are unlikely to be used to lead evidence from witnesses, or the accused, and the impact will be low as procedures are already in place for some routine hearings. However, if the social distancing policy is in place for a longer period then the use of remote appearance for trials and civil court and tribunal hearings may need to be considered. The impact of this will be more considerable and it is advised that detailed planning and testing is started on this to mitigate any issues with digital technology and access. In all cases, the courts and tribunals will be able to provide direction where it is considered the use of remote appearance would prejudice the fairness of proceedings or is not in the interests of justice.

Registration of copy of a traditional document submitted by digital means to the Keeper of the Registers of Scotland will make use of pre-existing systems and services offered by the Keeper, modified as required. These will be submitted by solicitors who are already users of the Keeper's other systems

## **Legal Aid Impact Test**

### Private and Social Rented Sector – protection from eviction

The Scottish Government does not expect provisions extending the notice to leave period and the notice of recovery of possession for tenants to have implications for legal aid as provisions protect tenants from eviction during the expected duration of the outbreak. The extended notice to leave period also provide tenants who are asked to leave more time to seek support to find suitable alternative accommodation. This lessens the need for the landlord to take forward eviction proceedings through the First-tier Tribunal for Scotland (Housing and Property Chamber) for private tenants and the Sheriff Court for tenants in the social sector.

### Justice provisions

The provision to increasing the availability of interim Legal Aid payments to solicitors and advocates is designed to be cost neutral to the legal aid fund.

The expansion of alternatives to prosecution may reduce the income of criminal defence agents if court time is reduced, this may result in potential savings to the legal aid fund. There are variables that mean an exact figure is not available. For example there may be a reduction in low level crime, due to a reduction in activity due to coronavirus.

It is possible that the increased power of the Court in relation to the admissibility of hearsay statements under section 259 of the Criminal Procedure (Scotland) Act 1995 may lead to an increase in criminal appeals, which may incur a cost to the legal aid fund. It is also possible that if the powers in the Bill to allow solemn trials to proceed with a judge sitting alone are exercised, this may lead to an increase in criminal appeals . However, alongside that is also the possibility that if individuals

remain on remand with no prospect of a trial in the near future then that could be legally challenged.

The other justice provisions in the Bill are to have no effect or only negligible impact on the legal aid fund.

## **Enforcement, sanctions and monitoring**

### Private and Social Rented Sector – protection from eviction

Landlords must follow the correct legal procedures for ending a tenancy; not doing so is a criminal offence and enforced by Police Scotland. The First-tier Tribunal For Scotland (Housing and Property Chamber) and Sheriff Court for social housing have a role in ensuring landlords comply with all their legal requirements before granting a repossession order.

To examine the impacts and outcomes of the new Private Residential Tenancy, the Scottish Government has developed a monitoring and evaluation framework. As part of this the Scottish Government is actively monitoring repossession cases that come before the First-Tier Tribunal for Scotland (Housing and Property Chamber). Social landlords are required to report their performance annually to the Scottish Housing Regulator, this includes the number of notices served and the number of repossessions. This will allow the impact of these provisions to be monitored.

### Adults with Incapacity

Guidance will advise local authorities to keep a record of those adults moved from hospital under s.13za and to provide these details to the Mental Welfare Commission, who will keep a record.

## **Implementation and delivery plan**

Due to the urgency of this legislation, provisions will come into force as soon as possible following the Bill receiving Royal Assent, unless otherwise stated in the Bill.

### Children's hearings

The changes proposed by the Bill on children's hearings proceedings will be implemented by the Scottish Children's Reporter Administration and Children's Hearings Scotland via their already-implemented Business Continuity and resilience planning – activated in full as of 23 March 2020. Electronically-enabled virtual children's hearings are already taking place across Scotland. Similarly, secure accommodation providers and local authorities have been sighted on the proposals and are preparing to give effect to the new timescales, which will enable to reprioritise resources and staff to focus on children and families most in need or at risk.

### Private and Social Rented Sector – protection from eviction

Immediately following provisions coming into force guidance and relevant forms for landlords and tenants will be updated as soon as feasible. This will ensure that landlords and tenants can access information about their amended rights and responsibilities during period these amendments apply to.

Implementation of the extended moratorium will be taken forward by Accountant in Bankruptcy. Largely this is a question of revising forms and guidance, and ensuring those likely to benefit have sufficient information

The implementation of the provisions within this Bill relating to Justice will be overseen by the Scottish Government and key stakeholders within the justice system. Such provisions will be implemented when appropriate to address the challenges posed by the coronavirus outbreak in Scotland.

The Scottish Government intends to set out the rationale for and a summary of the changes to the Freedom of Information (Scotland) Act 2002 on its website as soon as possible after these changes come into force, in accordance with its commitment to transparency and openness. The Scottish Government understands that the Scottish Information Commissioner is likely to issue guidance to Scottish public authorities and requesters on the effect of the changes. Officials will liaise with the Commissioner to support this work as necessary.

Registers of Scotland will work with the Law Society of Scotland to prepare guidance on the relevant provisions in the Bill and how they will work in practice. The guidance will be published on RoS website.

### **Post-implementation review**

Scottish Ministers are required by the Bill to report on the use of the Bill's powers every two months following Royal Assent. In those reports the Scottish Government will also set out its views about whether the provisions of the Bill continue to be necessary.

### **Summary and recommendation**

The purpose of the Bill is to allow Scottish Ministers to respond to the coronavirus outbreak in Scotland.

The costs associated with the Bill are necessary in order to ensure public services, business and consumers can continue to operate while taking account of new restrictions imposed upon them by these circumstances.

### **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed: James Hynd

Date: 30 March 2020



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