

# **Coronavirus (Extension and Expiry) (Scotland) Bill**

## **Business and Regulatory Impact Assessment**

**June 2021**

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

##### **What is being done**

1. Current public health guidance<sup>1</sup> continues to mean that businesses and public authorities operate very differently to the way they have done previously. In addition, revised Protection Levels were published in April 2021<sup>2</sup> which set out updated packages of measures in the levels-based approach, taking into account the higher transmissibility of the B.1617.2 variant and the impact of the progress made in the vaccination roll-out. The Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021<sup>3</sup> implement the approach. All restrictions will be kept under review in the event of new developments, such as the emergence of a new variant of concern, to ensure that they remain proportionate and necessary to support the ongoing public health response.

2. The Scottish Government continues to place great importance in responding to the coronavirus epidemic, and protecting the health of people living in Scotland.

3. The purpose of the Coronavirus (Extension and Expiry) (Scotland) Bill (“the Bill”), therefore, is to update a range of existing legislative measures which support various aspects of the ongoing response to the public health emergency caused by the coronavirus pandemic. The Bill amends the Scottish Acts which make temporary adjustments to respond to the pandemic. This Bill amends the expiry dates in Parts 1 of the Scottish Acts. At the same time the Bill also expires a number of provisions which are no longer considered necessary. Critically, the effect of this is to extend only those provisions which the Scottish Government considers remain essential in order for public services to be able to continue to discharge their functions in the most effective way during the current operating constraints. Many of the original provisions contained in the two Scottish Acts have already been expired in line with the Government’s commitment to remove provisions that are no longer required to respond to the public health emergency.

##### **Why**

4. Coronavirus (COVID-19) continues to pose a significant threat to public health in Scotland. The Scottish Government is committed to taking all steps necessary to address that threat. The Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 (“the Scottish Acts”) contain provisions which make temporary adjustments to respond to the pandemic, for example, by enabling the justice system to immediately respond to rapidly-evolving priorities and develop new and innovative ways of working, and to protect the health of people living in

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<sup>1</sup> [Coronavirus \(COVID-19\): guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance/pages/1-1-introduction.aspx)

<sup>2</sup> [Coronavirus \(COVID-19\) protection levels: what you can do - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-protection-levels/pages/1-1-introduction.aspx)

<sup>3</sup> [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 21\) Regulations 2021](https://www.gov.scot/publications/health-protection-coronavirus-restrictions-requirements-local-levels-scotland-amendment-no-21-regulations-2021/pages/1-1-introduction.aspx)

Scotland, for example by limiting the need for face to face contact by providing for the electronic submission of certain documents. Those provisions were subject to an expiry date, which was extended by regulations<sup>4</sup>, but which cannot be extended beyond 30 September 2021.

5. COVID-19 is first and foremost a public health crisis, and the measures to combat it have been necessary to save lives. The restrictions put in place using powers under the Coronavirus Act 2020 that have been in place since March 2020<sup>5</sup> have been extensive but necessary in order to limit transmission of the virus as far as possible. Public health measures needed to control and limit the spread of the virus continue to 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.

6. After taking firm action to stop the spread of the virus by implementing a nationwide lockdown, the Scottish Government published Coronavirus (COVID-19): Framework for Decision Making<sup>6</sup> in April 2020, setting out the principles and approach for responding to the epidemic based around managing four key harms: direct health impacts of COVID-19; non-COVID-19 health harms; societal impacts; and economic impacts. These harms are deeply inter-related: health harms impact on society and the economy, just as the societal and economic effects impact on physical and mental health and wellbeing.

7. The Scottish Government published COVID-19: Scotland's Strategic Framework in October 2020.<sup>7</sup> A strategic approach to outbreak management based on graduated levels of protection was introduced in Scotland on 2 November 2020, with five packages of measures to apply different degrees of downward pressure on the Reproduction Rate (R) of the virus, according to different epidemiological conditions in the areas in which they are applied. The levels were designed to be applied locally, regionally or nationally, depending on the course of the pandemic.

8. An update to COVID-19: Scotland's Strategic Framework was published in February 2021,<sup>8</sup> in which the Scottish Government re-confirmed its strategic intent to "suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible." It described six key tools for achieving this:

- The quickest practical roll-out of vaccinations, in line with advice from the Joint Committee on Vaccination and Immunisation (JCVI);
- The most effective use of testing and contact tracing;
- Applying proportionate protective measures (rules and guidance) to suppress transmission of the virus;

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<sup>4</sup> [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2020](#) and [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2021](#)

<sup>5</sup> [Coronavirus Act 2020 - Schedule 19 - Health Protection Regulations: Scotland](#)

<sup>6</sup> [Coronavirus \(COVID-19\): framework for decision making - gov.scot \(www.gov.scot\)](#)

<sup>7</sup> [Coronavirus \(COVID-19\): Scotland's Strategic Framework - gov.scot \(webarchive.org.uk\)](#)

<sup>8</sup> [Coronavirus \(COVID-19\): Strategic Framework update - February 2021 - gov.scot \(www.gov.scot\)](#)

- Effective measures to manage the risk of importation of the virus;
- Supporting individuals, businesses and organisations to adhere to protective measures; and
- Providing care and support to mitigate the harms of the crisis.

9. The emergence of the Variants of Concern B.1.1.7 and B.1.617.2 have increased the transmissibility of the virus, making it more challenging to effectively suppress. This is one reason why public health measures continue to be required.

## Overview of proposals

10. The Bill makes provision to expire the following provisions in Scottish Acts as they are deemed no longer necessary to support the ongoing public health response:

- Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020);
- Children and vulnerable adults: children’s hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020);
- Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020);
- Community orders (Section 5 and schedule 4 paragraphs 12; 14; 15(1) reference to “and drug treatment and testing orders.”; 15(6) reference to “or drug treatment and testing order” to expire; 16 definition of “drug treatment and testing order”; definition of “relevant local authority” 16(b) and definition of “specified period” of the Coronavirus (Scotland) Act 2020);
- Freedom of information (Section 7 and schedule 6 paragraph 6 of the Coronavirus (Scotland) Act 2020);
- Duties under the Public Finance and Accountability (Scotland) Act (Section 7 and schedule 6, paragraph 15 of the Coronavirus (Scotland) Act 2020);
- Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020);
- Irritancy clauses in commercial leases: non-payment of rent or other sums due (Section 8 and schedule 7 paragraph 6 and 7 of the Coronavirus (Scotland) Act 2020);
- Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020);
- Coronavirus Carer’s Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020);

- Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020);
- Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020).

11. The Bill also makes provision to extend Parts 1 of the two Scottish Acts which has the effect of ensuring that the following provisions in the Scottish Acts, which remain essential in order for public services to be able to continue to discharge their functions in the way they were intended to, will be available beyond 30 September 2021 to support various aspects of the ongoing response to the public health emergency:

- Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020);
- Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020);
- Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020);
- Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020);
- Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020);
- Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020);
- Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020);
- Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020);
- Parole Board (Section 5 and schedule 4: paragraphs 17 and 18(1) and (3) of the Coronavirus (Scotland) Act 2020);
- Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020);
- Legal Aid (Section 5 and schedule 4: paragraphs 21 – 23 of the Coronavirus (Scotland) Act 2020);
- Alcohol licensing (Section 6 and schedule 5 of the Coronavirus (Scotland) Act 2020) and Licensing other than alcohol licensing (Section 7 and schedule 6: paragraph 1 of the Coronavirus (Scotland) Act 2020);
- Freedom of Information (Section 7 and schedule 6: paragraphs 2 and 7 of the Coronavirus (Scotland) Act 2020);
- Freedom of Information (Section 5 and schedule 4: paragraph 12 of the Coronavirus (Scotland) (No.2) Act 2020);

- Duties in respect of reports and other documents (Section 7 and schedule 6: paragraphs 8 – 10 of the Coronavirus (Scotland) Act 2020);
- Local Authority meetings (Section 7 and schedule 6: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020);
- Duration of planning permission (Section 8 and schedule 7: paragraphs 8 – 10 of the Coronavirus (Scotland) Act 2020) and Listed buildings and conservation areas: consents (Section 5 and schedule 4: paragraph 2 of the Coronavirus (Scotland) (No.2) Act 2020);
- Land registration: electronic delivery of copies to Registers of Scotland (Section 8 and schedule 7: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020 and Section 5 and schedule 4: paragraphs 3-4 of the Coronavirus (Scotland) (No.2) Act 2020);
- Scrutiny of subordinate legislation in urgent cases (Section 8 and schedule 7: paragraphs 23-30 of the Coronavirus (Scotland) Act 2020);
- Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) which are being expired);
- Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020);
- Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020);
- Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020);
- Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020);
- Care Homes - Emergency directions and emergency intervention orders (Section 2 and schedule 1: paragraphs 16 – 17 of the Coronavirus (Scotland) (No.2) Act 2020);
- Powers to purchase care home services and care at home providers (Section 2 and schedule 1: paragraphs 18 to 21 of the Coronavirus (Scotland) (No.2) Act 2020);
- Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020);
- Criminal Justice - Arrangements for the custody of persons detained at police stations (Section 3 and schedule 2: paragraphs 2 – 5 of the Coronavirus (Scotland) (No.2) Act 2020);
- Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020);

- Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020);
- Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020);
- Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020);
- Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020);
- Council tax: exempt dwellings (Section 5 and schedule 4 paragraph 15 of Coronavirus (Scotland) (No.2) Act 2020);
- Restriction on giving grant to businesses connected to tax havens (Section 5 and schedule 4: paragraph 16 of the Coronavirus (Scotland) (No.2) Act 2020).

12. As the Scottish Acts contained measures which required to respond to an emergency situation it was important that they contained a number of safeguards. These included: the relevant provisions in the Acts automatically expired less than six months after they came into force, although this could be extended by the Scottish Parliament for two further periods of six months; where a provision was no longer considered necessary, Scottish Ministers may bring it to an end earlier; Scottish Ministers are required to report on the continued need for the measures, and on the use of powers in the Scottish Acts, every two months.

13. These safeguards will continue to be in place for the duration of the extension period, with the expiry date of Parts 1 of the Scottish Acts being extended by this Bill for a six month period to 31 March 2022, with the Scottish Parliament given the power to extend the Acts for a further period of six months to 30 September 2022. Parliamentary agreement to approve such regulations would be made only if deemed necessary at that time. The Bill contains no provision to extend the Acts beyond 30 September 2022.

14. A number of provisions, as set out in paragraph 10, which, following engagement with stakeholders, are no longer deemed necessary to have in place beyond 30 September 2021, are expired in this Bill. The Scottish Government remains committed to keeping the provisions of the Scottish Acts, as extended by this Bill, under review at all times, under the now established review scheme.

### **Rationale for Government intervention**

15. 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 this legislation will assist public services, business and consumers to continue to operate while taking account of new restrictions imposed upon them.

16. The Scottish Government is satisfied that the Bill contains necessary measures required to continue responding appropriately to the public health crisis. The Scottish Government is satisfied that all of the measures contained in the Bill are appropriate and proportionate, and, in line with the Scottish Acts, the Bill ensures the safeguards described above at paragraph 13 are provided for.

### **Consultation:**

#### **a) Within Government**

17. All measures in the Scottish Acts still in force were considered within the Scottish Government to determine which ones are expected to remain essential beyond 30 September 2021 to respond to the continued public health crisis. The existing measures were considered against how necessary they continue to be; whether alternative existing legislative powers could be used to achieve the same effect now that more is known about the pandemic, and the Government's approach to tackling it, has developed; and what would occur if measures were not extended. The provisions contained within this Bill reflect the outcome of that government consultation and consideration.

#### **b) Public Consultation**

18. Section 15 of the Coronavirus (Scotland) Act 2020 and section 12 of the Coronavirus (Scotland) (No.2) Act 2020 require the Scottish Government to review and report on the operation of the provisions in Part 1 of the Scottish Acts every two months. As part of that reporting process, the Scottish Government consults with relevant stakeholders on individual measures, where appropriate. Given the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, it is important that some of the provisions in the Scottish Acts remain in force after 30 September 2021. Due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation on the Bill itself. However, the Scottish Government has built on the informal consultation carried out as part of the regular reporting process and has informally consulted, as appropriate, with public bodies affected by the measures to be expired and extended by the Bill. Details of that consultation, where available, is set out in the Policy Memorandum which accompanies the Bill.

#### **c) Business**

19. In order to respond as quickly as possible to ensure no legislative gap of necessary provision when the Scottish Acts expire on 30 September 2021, formal consultation with business was not possible.

### **Options**

20. Two options have been considered: i) Do nothing and allow all measures in the Scottish Acts to expire on 30 September 2021; ii) Take forward a Bill which the Government proposes to progress under the emergency procedure to extend Parts 1



of the Scottish Acts which would have the effect of ensuring that provisions in the Scottish Acts which are not expired will be available beyond 30 September 2021 to respond appropriately to the on-going situation.

21. Option i) was ruled out. The measures taken in the Scottish Acts to respond to the pandemic reflect the magnitude of the challenge presented by it. Measures which have either fulfilled their purpose, or were no longer deemed necessary, have already been expired. Doing nothing will mean a loss of important measures which have aided in Scotland's response to the pandemic, which are still deemed necessary. This would leave businesses and members of the public without assistance from the Scottish Government and potentially exposed to disadvantage.

22. Option ii) is the Scottish Government's selected option as it addresses necessary measures as a matter where either no alternative legislative options are available within the required timeframe, or primary legislation, with associated Parliamentary scrutiny, has been identified as the best legislative solution.

### **Primary legislation which the Scottish Government proposes to progress under the emergency procedure**

#### Sectors and groups affected

23. A wide range of sectors and groups continue to be affected as the Bill proposes the expiry or extension, as appropriate, of time-limited powers connected to the Scottish justice system, social security claimants, business, public services, tax system and consumers. These include, but are not restricted to:

- Creditors
- Debt Advice Agencies
- Accountant in Bankruptcy
- Students
- Purpose Built Student Accommodation Providers
- Universities and colleges providing accommodation
- Further and Higher Education Sector Representatives
- Registered Social landlords
- Letting agents
- Home owners
- Adult and Children's Social Care
- Children's Hearings Scotland (CHS)
- National Convener of CHS
- Scottish Children's Reporter Administration (SCRA)
- Principal Reporter of SCRA
- Social Security Scotland
- Social security claimants
- Police Scotland
- Third Sector Organisations
- Local Authorities
- Scottish Information Commissioner

- All public bodies subject to FoISA
- Licensing Boards
- Licence holders/applicants
- Scottish Legal Aid Board
- Solicitors and counsel
- Scottish Prison Service (SPS)
- Scottish Courts and Tribunal Service (SCTS)
- Crown Office and Procurator Fiscal Service (COPFS)
- Police Scotland
- Individual taxpayers
- Registers of Scotland

## **Consideration of measures to be expired**

1. Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

### Benefits

Section 3 and Schedule 2, paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020 remove the prohibition against benefitting from more than one moratorium on diligence in any 12 month period. The intention behind this amendment was to ensure that those who had recently had a moratorium prior to the on-set of the pandemic were not excluded from the effect of the changes. This provision has now been in place since 7 April 2020 and the policy rationale to protect those who had utilised a pre-pandemic 6 week moratorium no longer exists.

The expiry of these provisions will serve to protect the Article 1 Protocol 1 rights of creditors and prevent them from being unduly prejudiced by repeat moratorium applications that could result in sequential 6 month periods of protection from any debt recovery action.

The extension of the existing moratorium on diligence and bankruptcy from six weeks to six months remains in force and this prevents creditors from taking action against individuals who have financial difficulties, thus allowing those individuals time to find advice on how best to deal with their debts and, in current circumstances, also to recover from time-limited income shocks without having to take serious steps like applying for bankruptcy. This creates a 'breathing space' in which an individual can seek money advice, and find the right longer term solution for their circumstances.

### Costs

There are no anticipated costs arising from the expiry of these provisions.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

The primary purpose of the extended period of moratorium protection is to allow consumers experiencing problems with debt to seek advice and the appropriate solution without the threat of formal recovery action being instigated. These protections remain and the expiry of the provision that removes the prohibition against benefitting from more than one moratorium on diligence in any 12 month period is considered to have minimal impact on consumers. This was initially introduced to provide that those who had recently had a 6 week moratorium prior to the on-set of the pandemic were not excluded from the effect of the changes.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Expiry of the provisions will see a reversion to normal practice, albeit retaining the extended period of moratorium protection. Monitoring and reporting of the use of the provisions have been on a bi-monthly basis to the Scottish Parliament.

### Implementation and delivery plan

The expiry of these temporary provisions does not require any implementation or delivery plans.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

2. Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

### Benefits

The Coronavirus (Scotland) Act 2020 enabled the continuation of critical legal proceedings to keep children safe by relaxing the minimum composition requirements of children's hearings. That Act preserved necessary independent decision-making in respect of cases where compulsory intervention in the lives of children and families may be required. It promoted swifter, more efficient processing of hearings decision notifications by enabling electronic authentication. It enabled 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 prevented the lapsing of lawful orders protecting children because hearings proceedings on a given day might have to be cancelled. It promoted improved resilience and physical distancing by dis-applying rights and duties on children, families and partner agencies to attend in person. It provided additional support and flexibility to critical services provided by kinship and foster carers.

At the outbreak of COVID-19 there was 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 would 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 was also significant challenges with convening a lawful children's hearing within existing timescales in the peak COVID-19 period. There was potential for a high number of children who needed to be moved from their kinship, foster or residential home in an unplanned way due to illness – the resilience and availability of alternative out of authority emergency placements was therefore impacted and authorities would have more difficulty in sourcing them. These provisions ensured the most vulnerable children are protected during these unprecedented times.

### Costs

The Scottish Government has invested £2.5 million in the infrastructure across 2020/21 and 2021/22 to assist with a Children's Hearings Covid Recovery Plan.

### Scottish Firms Impact Test

Reverting back to pre-COVID legislation will have no effect on Scottish business or consumers and therefore no formal consultation required.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

Children and families will see a system that is running back at normal levels and decisions made back at normal scheduled timescales which will be quicker when the emergency legislation expires.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances. Separate legislation updating the Children's Hearings Rules of Procedure which comes into force will allow a continuity of the electronic authentication process. During the pandemic the joint Digital Strategy between the Scottish Children's Reporter Administration and Children's Hearings Scotland has been implemented – this includes a modernised Case Management system able to support children and families more appropriately. A large scale project to allow children's hearings to be heard virtually and significant support services to users is in place.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Expiry of Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 will be reverting back to normal practice. Monitoring and reporting of the use of the emergency provisions has been on a bi-monthly basis to Scottish Parliament.

### Implementation and delivery plan

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.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

### 3. Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

#### Benefits

The Bill extended the period of time for which guardians are appointed. This avoided the need to make applications for renewal of powers for those guardianships that

would have expired during the period of crisis. When the provisions were introduced the courts were only hearing urgent interim guardianship cases, the Office of the Public Guardian had a minimal amount of staff available and there were less doctors, mental health officers and solicitors available to complete the documentation required for guardianship (and renewal of guardianship) applications. The provisions took the pressure off the above organisations and professionals, enabling them to concentrate on essential business. The same applies to extension of the period of time for which section 47 certificates for medical treatment are authorised.

### Costs

The provisions have been suspended since September 2020. No additional costs have arisen since then and the Scottish Government does not expect there to be any additional costs as a result of the expiry of the provisions. Guardianship and section 47 certificates were extended for the emergency period, but renewal applications for guardianships and authorisation of new section 47 certificates had to be undertaken once the provisions were suspended and will continue to be completed once the provisions are expired.

### Scottish Firms Impact Test

Reverting back to pre-COVID legislation will have no effect on Scottish business or consumers and therefore no formal consultation required.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

The Office of the Public Guardian and the Scottish Courts and Tribunals Service advise that they are processing guardianship applications as business as usual. There are delays getting mental health officer reports and doctors reports in some instances, however these are issues that were already present within the guardianship system, that are being addressed and that are not covid related.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

## Enforcement, sanctions and monitoring

The continuing necessity to suspend the provisions was monitored closely by an Adults with Incapacity Emergency Legislation Commencement Consideration Group meeting every 4-5 weeks. Monitoring and reporting of the use of the emergency provisions has been on a bi-monthly basis to Scottish Parliament.

## Implementation and delivery plan

The expiry of these temporary provisions does not require any implementation or delivery plans.

## Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

4. Community orders (Schedule 4 paragraphs 12; 14; 15(1) reference to “and drug treatment and testing orders.”; 15(6) reference to “or drug treatment and testing order” to expire; 16 definition of “drug treatment and testing order”; definition of “relevant local authority” 16(b) and definition of “specified period” of the Coronavirus (Scotland) Act 2020)

## Benefits

To date these provisions have not been used and, taking into account the likely progress of the pandemic and recovery work, the Scottish Government does not envisage any circumstance where they would be required in future.

The Scottish Government does not consider it proportionate or necessary to extend these provisions, therefore they should expire on 30 September 2021.

## Costs

Expiry of these provisions does not create additional costs on the Scottish Government; does not create additional costs on local authorities; and does not create additional costs on other bodies, individuals and businesses.

## Scottish Firms Impact Test

There is not considered to be an impact on Scottish business or consumers as a result of the expiry of these temporary provisions.

## Competition Assessment

The expiry of these temporary provisions will not have any impact on competition.

## Consumer Assessment

The expiry of these temporary provisions will have no direct impact on consumers.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts. The expiry of these temporary provisions will result in a return to pre-COVID normal practice.

### Implementation and delivery plan

The expiry of these temporary provisions does not require any implementation or delivery plans.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

## 5. Freedom of information (Section 7 and schedule 6 paragraph 6 of the Coronavirus (Scotland) Act 2020)

### Benefits

Where a Scottish public authority fails to comply with the timescales for responding to requests and requirements for review under the Freedom of Information (Scotland) Act 2002 (FOISA), this provision enables the Scottish Information Commissioner to decide that, notwithstanding the delay, the authority has complied with Part 1 of FOISA if certain conditions are met. Its expiry restores the original position in FOISA, meaning that a failure to comply with the timescales is a failure to comply with Part 1 of FOISA.

### Costs

The expiry of this provision will not result in any additional costs.



### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself. In any event, the expiry of the provision only affects Scottish public authorities. Most authorities are neither businesses nor consumers.

### Competition Assessment

There is no need for a competition assessment.

### Consumer Assessment

There is no need for a consumer assessment.

### Test run of business forms

The expiry of this provision will not result in the introduction of any new business forms, so there is no current need for the test run of business forms.

### Digital Impact Test

No digital impact test is required. The expiry of this provision does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of this provision does not give rise to any impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Following the expiry of this provision, Scottish public authorities' compliance with their duties under FOISA will be monitored and enforced by the Scottish Information Commissioner as they were before its introduction.

### Implementation and delivery plan

The Scottish Government understands that the Scottish Information Commissioner may issue guidance to Scottish public authorities and requesters on the effect of the expiry of this provision. Officials will liaise with the Commissioner to support this work as necessary.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

6. Duties under the Public Finance and Accountability (Scotland) Act (Section 7 and schedule 6, paragraph 15 of the Coronavirus (Scotland) Act 2020)

Benefits

The provisions allowed for amendment of the statutory deadlines for annual accounts as set by the Public Finance and Accountability Act 2000. The deadlines for such accounts were the 31 December 2020 and 31 December 2021 respectively. The first statutory deadline was met in December 2020 and there have been no requests to utilise this provision during the current reporting cycle for December 2021.

Costs

No impact is anticipated.

Scottish Firms Impact Test

The expiry of these temporary provisions will have no impact on Scottish Firms.

Competition Assessment

There is no impact on competition.

Consumer Assessment

There is no impact on consumers.

Test run of business forms

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

Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

Enforcement, sanctions and monitoring

There is no impact on enforcement, sanctions or monitoring.

## Implementation and delivery plan

Officials will continue to work with Audit Scotland on the delivery of timely annual accounts.

## Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

## 7. Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

### Benefits

The provisions which are to be expired by the Bill are paragraphs 1(b) and 5 of schedule 7 of the Coronavirus (Scotland) Act 2020, which relax the timescales which apply for Social Security Scotland making re-determinations.

Evidence suggests that these provisions brought some benefit in allowing the Agency to be able to manage redeterminations with reduced capacity as a result of coronavirus and by allowing clients additional time to provide information required for a redetermination to be made. This had the knock-on benefit of preventing redeterminations which were delayed by Coronavirus, and therefore not completed by the original deadline that existed without the extension, going to the First Tier Tribunal unnecessarily.

There has always been a need to balance the benefits of the provisions in tackling disruption caused by coronavirus against the risk that people's right to challenge, including a timely redetermination response by Social Security Scotland, might be undermined by delays to redeterminations being allowed under the provisions. Where previously the balance favoured accepting the risk of allowing the extension when weighed against the benefits to clients and the agency, the strategic approach to outbreak management based on five graduated levels of restrictions, which is providing for the easing of restrictions, has meant Social Security Scotland are now able to better manage their capacity and are confident processes are in place to handle the caseload. This means the balance now favours expiring these provisions on 31 September as it is anticipated the extended timescales will no longer be needed. As a result, redeterminations will return to being made within their usual timescales, in compliance with clients' rights to timely decision making.

### Costs

Costs are anticipated to return to the level planned within the Social Security Programme, as they were prior to the crisis. 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.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself. There are no anticipated impacts, however. Social Security Scotland anticipate that working practices will return to those seen before the pandemic.

### Competition Assessment

There is no need for a competition assessment.

### Consumer Assessment

There is no need for a consumer assessment.

### Test run of business forms

The expiry of this provision will not result in the introduction of any new business forms, so there is no current need for the test run of business forms.

### Digital Impact Test

No digital impact test is required. The expiry of this provision does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of this provision does not give rise to any impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Following the expiry of this provision, Social Security Scotland's performance in relation to redeterminations will be monitored and reported on as part of normal reporting arrangements. There are no specific sanctions or enforcement considerations associated with the expiry of these provisions.

### Implementation and delivery plan

The expiry of these temporary provisions does not require any implementation or delivery plans.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

8. Irritancy clauses in commercial leases: non-payment of rent or other sums due (Section 8 and schedule 7 paragraph 6 and 7 of the Coronavirus (Scotland) Act 2020)

Benefits

The provisions extended the period that a landlord could evict a commercial tenant for non-payment of rent from 14 days to 14 weeks. This effectively allowed the tenant to defer rental payments for this period giving sufficient time for the parties to come together to reach mutually beneficial agreements which could include rental holidays deferment and reductions as well as leases restructuring where appropriate. The tenant was still expected to pay if they could and eviction was still possible after 14 weeks. The measures worked in conjunction with the voluntary UK-wide Code of Practice for the Commercial Property Sector which was introduced in June 2020 and is due to expire in June 2021. Together, anecdotally, the measures have worked well with many agreements being put into place although there is no way of assessing numbers being preventative in nature. This has assisted in retaining jobs and keeping businesses viable during the periods where opening was not possible or reduced.

Costs

There are no costs associated with the provisions.

Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself. Informal consultation with major stakeholders consisting of the Royal Institution of Chartered Surveyors (RICS) and the Scottish Property Federation (SPF) indicate that they are content that the provision is expired.

Competition Assessment

There is no need for a competition assessment.

Consumer Assessment

There is no need for a consumer assessment.

Test run of business forms

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

Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The measures changed the minimum period required for evicting a commercial tenant for non-payment of rent in a contractual agreement so any enforcement would be through the usual legal processes between the parties. However, no instances of any attempted breaches have been recorded. As noted above the provision was not capable of being monitored, being preventative in nature. On expiry it is not anticipated that there will be an avalanche of evictions as the provision was not absolute and eviction could still have taken place throughout the period it was in force.

### Implementation and delivery plan

The expiry of these temporary provisions does not require any implementation or delivery plans.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

9. Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

These provisions temporarily provide for a 7 day notice to leave period for those currently tied into a student residential tenancy entered prior to 27 May 2020. The expiry of these measures could result in potential savings to providers who will now operate on a 28 day notice period. It should be noted that the Scottish Government believes the numbers of students who will be affected by the expiry of this provision to be low.

### Costs

The potential costs associated with the expiry of these provisions are, assuming a 1 to 4 weeks rental loss for those students making use of the 7 day notice to leave resulting in a loss between £126 and £504. Again we believe the numbers of students involved to be low.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

As these provisions apply equally to all providers of purpose built student accommodation and halls of residence, they are unlikely to have any impact on competition.

### Consumer Assessment

The student tenancy provisions will then enable all students living in purpose built student accommodation and halls of residence to give their landlord 28 days' notice to leave and this will continue to provide protection for consumers during the pandemic.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The Scottish Government will work with key stakeholders including those representing students and accommodation providers through their student accommodation group to share guidance and monitor the impact of these measures.

### Implementation and delivery plan

Guidance for students and affected accommodation providers will be updated as soon as feasible following completion of the Bill. This will ensure that students and those providing purpose built student accommodation and halls of residence can access information about their rights and responsibilities.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the coronavirus pandemic. Therefore, there is no need for post-implementation review.

10. Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

Benefits

Payment was made successfully to over 80,000 unpaid carers at the end of June 2020. Around 83,000 carers are expected to benefit once all backdated payments are made.

Costs

The Coronavirus Carer's Allowance Supplement provided 83,000 carers with a payment of £230.10 in June 2020, at a total expenditure of £19.2 million.

The Scottish Government does not anticipate any extra costs for business as a result of expiry of the provisions.

Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

Competition Assessment

No competition assessment is required.

Consumer Assessment

The expiry date for these provisions was, firstly extended to 31 March 2021 and subsequently to 30 September 2021 as part of the extension regulations to allow for the first round of backdated payments to be made. The Scottish Government is content that backdating can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force. The Scottish Government does not consider any saving or transitional provisions are therefore required in connection with expiry.

Test run of business forms

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

Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

Legal Aid Impact Test



The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

No enforcement, sanctions or monitoring will be necessary.

#### Implementation and delivery plan

The Scottish Government is content that backdating can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force.

#### Post-implementation review

The Scottish Government is content that backdating can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force. Therefore, there is no need for a post-implementation review.

#### 11. Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

Preparing the fortnightly report has reduced the Care Inspectorate's capacity to carry out wider scrutiny activity. Further, a near normal pre-coronavirus pandemic process is now in place meaning full inspection reports are being published around the same time as the associated and less detailed parliamentary report. The weekly reporting of deaths is heavily reliant on accurate reporting by care homes, which is not always available. Furthermore, the official statistics published by National Records of Scotland are now well established.

Expiring these provisions will therefore remove unnecessary duplication of effort which keeps inspection teams and wider Care Inspectorate resources under pressure and will increase capacity to carry out wider scrutiny work. The Scottish Government does not consider it proportionate or necessary to extend these provisions, therefore they should expire on 30 September 2021.

#### Costs

The Care Inspectorate repurposed their business in response to the coronavirus pandemic. The Scottish Government acknowledges the Care Inspectorate's view that the preparation and publication of the fortnightly report on inspections has placed pressures on operational capacity.

Expiry of these temporary provisions will enable the Care Inspectorate to return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. The Scottish Government will request that the Care Inspectorate includes

details of the impact of the coronavirus pandemic in its next Annual Report and Accounts.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

The fortnightly reports have been helpful in getting information into the public domain more quickly to provide assurance to the Scottish Ministers, Parliament and the public at a time where levels of anxiety about the safety and wellbeing of care home residents and staff was understandably high.

The weekly reporting of deaths has provided useful data and has been a key part to the overall process during the pandemic.

A near normal pre-coronavirus pandemic process is now in place at the Care Inspectorate meaning full inspection reports are being published around the same time as the associated and less detailed parliamentary report. The Care Inspectorate will continue to work to a target of 20 days for a draft report to be sent to a provider for a factual accuracy check and subsequently for inspection reports to be published.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic.

In addition to the implementation and delivery plan described below, the Scottish Government will continue to work closely with the Care Inspectorate to consider how

best to make use of data they collect, and to review the Executive Framework document and Reporting and Communications Protocol to ensure the body is carrying out its statutory duties and operating effectively.

### Implementation and delivery plan

In response to the coronavirus pandemic the Care Inspectorate published a revised Scrutiny, Assurance and Improvement Plan 2020-21<sup>9</sup> where they set out that, notwithstanding the fortnightly report to the Scottish Parliament, they would continue to publish more detailed, individual inspection reports that follow normal protocols, and that during the emergency period they had reduced this to publication in around ten days.

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. The Care Inspectorate will continue to work to a target of 20 days for a draft report to be sent to a provider for a factual accuracy check and subsequently for inspection reports to be published. The Scrutiny, Assurance and Improvement Plan will be reviewed at a later date.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

## 12. Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

The policy underpinning the provision can continue to be delivered after the provision has expired. Further, the right of men and women of marriageable age to marry is already protected by Article 12 of the European Convention on Human Rights (ECHR). Guidance published on the Scottish Government website, and regularly reviewed, has assisted couples planning to marry or register a civil partnership and celebrants to understand and take account of relevant restrictions.<sup>10</sup> Also, as part of their existing work on publishing statistics on vital events, National Records of Scotland (NRS) provide quarterly figures on their website on the number of marriages and civil partnerships taking place.<sup>11</sup>

### Costs

The Scottish Government has not identified any costs as a result of the expiry of the provision on marriage and civil partnership.

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<sup>9</sup> [Revised Scrutiny Assurance and Improvement Plan 2020-21.pdf \(careinspectorate.com\)](https://www.careinspectorate.com/scrutiny-assurance-improvement-plan-2020-21/)

<sup>10</sup> [Coronavirus \(COVID-19\): wedding ceremonies and civil partnership registrations - gov.scot \(www.gov.scot\)](https://www.gov.scot/Coronavirus-(COVID-19)-wedding-ceremonies-and-civil-partnership-registrations/)

<sup>11</sup> [Births, Deaths and Other Vital Events - Quarterly Figures | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/births-deaths-and-other-vital-events-quarterly-figures/)

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

No consumer assessment is required.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The expiry of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The guidance for couples planning to marry or enter a civil partnership will continue to be reviewed regularly.

### Implementation and delivery plan

No implementation or delivery planning is necessary.

### Post-implementation review

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the outbreak of the coronavirus pandemic. Therefore, there is no need for post-implementation review.

## Consideration of measures to be extended

### 1. Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

#### Benefits

Tenants in both the private and social rented sectors continue to find themselves in financial difficulty due to the current outbreak and are unable to meet their obligations under their tenancy agreement. Uncertainty regarding the impact on finances and employment will continue through the recovery from the pandemic. Tenants, both private and social, remain at risk of having their home repossessed by their landlord at a time when housing, health and other public services remain pressured and uncertainty in the labour market persists. As restrictions ease there remains a need to prevent the unnecessary displacement of tenants, and the risk of homelessness, especially if areas are required by the strategic outbreak management approach to move one of the higher levels at very short notice. The continuation of these provisions will ensure that tenants continue to benefit from the increased protection giving those asked to leave more time to seek support and to find suitable alternative accommodation.

#### Costs

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; the recovery path from the pandemic and the extent to which they can access available UK and Scottish financial support.

- 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. The vast majority of registered landlords in Scotland have only one property and the average rent for a 2 bed property (the most common property size) is £689 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 £3,445 over the longer notice period. It should be noted that the Private Landlord (non-business) Covid-19 Loan Support scheme, which offers interest free loans to small scale landlords, remains available.
- 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 2019-20, the Housing and Property Chamber received 4,141 applications across ten jurisdictions. The vast majority (87%) of applications received fell within the new private rented sector jurisdiction. Almost half (42%) of all applications received were for eviction. During 2020-21, the Housing and Property Chamber received 2,467 applications across ten jurisdictions. The vast majority (79%) of applications received fell within the new private rented sector jurisdiction. A total of 31% of all applications received were for eviction and 34% of all applications received were for civil proceedings cases.
- Funding to the SCTS in respect of private rented sector cases was £2,583k in 2018-19, £3,942k in 2019-20 and £3,443k 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 the social rented sector, information published by the Scottish Housing Regulator shows that the total value of rent arrears increased by £15.0m (10%) over the four months between the end of April and the end of August 2020, from £150.0m to £165.0m. The value of arrears subsequently dropped slightly to £163.5m in September and £164.0m in October 2020, although the value has decreased in the most recent month to stand at £160.7m as at end March 2021, but remains over £10.0m higher than in April 2020. In addition the Scottish Housing Regulator reported in May that RSLs entered the pandemic in a strong financial position and, based on the 2020/21 monthly returns, have coped well over the last year with the short term financial impact of the pandemic.
- 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, have been delayed or postponed due to the Coronavirus pandemic.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

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

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 pandemic.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

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.

#### Implementation and delivery plan

Guidance and relevant forms have been made available. and web traffic statistics indicate these pages are well used. Landlords and tenants are accessing information about their amended rights and responsibilities during these continued pandemic arrangements. In addition, a range of work to raise awareness amongst tenants and landlords of these measures has been carried out. This has included providing information to all social and private tenants and landlords, three social media campaigns and the dissemination of information through housing stakeholders.

Private Rented and Social Housing Resilience Groups have also been established, supporting the Scottish Government's ongoing response to the pandemic. Minutes of their meetings can be accessed on the Scottish Government [website](#).

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament will follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remain necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

## 2. Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

### Benefits

These provisions extend the period of any new moratoriums to a period of six months. This extension of the existing moratorium on diligence and bankruptcy from six weeks to six months prevents creditors from taking action against individuals who have financial difficulties, thus allowing those individuals time to find advice on how best to deal with their debts and, in current circumstances, also to recover from time-limited income shocks without having to take serious steps like applying for bankruptcy. Various organisations and published reports highlight the future increased demand for debt advice and solutions as a consequence of the pandemic. These will be driven primarily by income and employment shocks as government business support is withdrawn and a reduction in creditor forbearance is seen, each of which have assisted in keeping the levels of personal insolvency low during the period of the pandemic.

The effect of these provisions is to extend the period when creditors are prevented from taking action against a debtor for debts owed by them. This applies on the giving of notice by a debtor that they will apply for sequestration, for a protected trust deed for the benefit of creditors or to a statutory Debt Arrangement Scheme. This



creates a 'breathing space' in which the debtor can seek money advice, and find the right longer term solution for their circumstances.

#### Costs

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

#### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

#### Competition Assessment

No competition assessment is required.

#### Consumer Assessment

The extended period of moratorium protection will have a positive impact for consumers as it provides an extended breathing space to seek advice and an appropriate solution for problem debt.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Enforcement of the moratorium protection and the restriction placed on formal debt recovery action will ultimately be for the Scottish Courts. For example, a creditor petition bankruptcy through the Sheriff Court would not be accepted with a statutory moratorium in place. Monitoring and reporting of the use of the provisions have been on a bi-monthly basis to the Scottish Parliament.

#### Implementation and delivery plan

No implementation or delivery plans are required. The provisions have been in operation since April 2020.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament will follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remain necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

### 3. Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

#### Benefits

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.

#### Costs

These provisions have been used by Police Scotland through the ability to remotely crave warrants. The reduction in travel time, whilst realising small savings has also supported efficiencies in investigative processes.

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.

The extension of these provisions does not create additional costs on the Scottish Government. It is anticipated that the legal defence community may incur costs to enable participation in remote court proceedings, although this is likely to be minimal as it is expected that many agents may already have access to existing IT used for video calling to clients that are on remand or serving sentences.

#### Scottish Firms Impact Test

An independent Advisory Group support the work of COVID19 recovery and renewal across the justice system. It's membership of third sector organisations provide regular feedback and a mechanism for consultation on human rights issues, equalities and overall impact on system users.

#### Competition Assessment

There are no competition concerns.

### Consumer Assessment

These provisions continue to provide much higher levels of business resilience to the justice sector to conduct business electronically and remotely where possible; and to alleviate the backlog of cases and their subsequent impact on victims, witnesses and accused.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

There are no enforcement or sanctions relating to the provisions. Monitoring continues to take place through the Advisory Group and the relevant work streams under the Justice Recovery Programme.

### Implementation and delivery plan

The provisions have been in operation since April 2020.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 4. Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

##### Benefits

This legislative change increased the maximum level of a fiscal fine from £300 to £500 allowing alternative action to prosecution to be taken in a wider range of summary cases thereby mitigating the impact of coronavirus on the justice system. In accordance with the revised policy guidance issued by the Lord Advocate in relation to fiscal fines, Prosecutors are directed to first consider offering a direct measure, in particular a fiscal fine, in relation to appropriate cases which would otherwise have proceeded in the Justice of the Peace court. Providing for the expansion of the use of alternatives to prosecution has enabled a greater number of cases to be resolved without the need for court procedure and associated appearance at court. This has freed up the courts and prosecutors to deal with more serious cases and ease the burden on the courts during a time of significant resource pressure as a result of coronavirus.

##### Costs

Although it can be seen that the increase in the maximum level of a fiscal fine has allowed for alternative action to prosecution to be taken in a wider range of cases, the reduced costs arising from fewer court proceedings in practice and the associated savings to COPFS and the SCTS which would ordinarily be effected as a result of diverting a greater number of cases from prosecution are largely notional savings as the number of court cases has overall been limited by the significantly reduced operational capacity to deal with summary court proceedings as a result of the coronavirus pandemic.

##### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

##### Competition Assessment

No competition assessment is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on Scottish firms or competition.

##### Consumer Assessment

No consumer assessment is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on Scottish consumers.

##### Test run of business forms

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

##### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

The provisions have been in operation since April 2020.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 5. Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

##### Benefits

The provision introduced Scotland-wide jurisdiction for sheriffs dealing with first appearances from police custody and any continuation of the case up until a not guilty plea is tendered (or full committal in petition proceedings). This has enabled custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sheriffdom no matter where the alleged offence took place during the coronavirus outbreak. This has provided the necessary flexibility to allow for police centralised custody suites and to enable custody courts to be conducted in a way that minimises unnecessary travel and congregation of people in accordance with public health guidance. It has also enabled more efficient prioritisation of court resources as the number of judges required to consider custody cases at any given time has been reduced. As such, the provision has created greater flexibility in the programming of court business to help SCTS manage the significant backlog of cases arising from the coronavirus outbreak and will form an important part of the justice system's recovery from the lingering impacts caused by coronavirus.

## Costs

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 SCTS. The provision simply redistributes the cases to which it applies across the country.

## Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

## Competition Assessment

No competition assessment is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on Scottish firms or competition.

## Consumer Assessment

No consumer assessment is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on Scottish consumers.

## Test run of business forms

There is no current need for the test run of business forms. This provision has not resulted in the creation of any new forms for businesses etc. to complete.

## Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

## Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

## Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

The provisions have been in operation since April 2020.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

### 6. Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

#### Benefits

The suspension of statutory time limits for a period of 6 months (or 3 months where an accused in a summary case is being held on remand) is likely to result in resources savings for COPFS and SCTS by reducing the number of applications that require to be made to extend time limits on a case-by-case basis and the court time needed to determine those applications.

#### Costs

Where the time limits relate to an accused person who is being held on remand, it is *possible* that the suspension of time limits could result in an increase in persons detained by the Scottish Prison Service. It is difficult to assess the extent of this as in many cases, if these provisions had not been in effect, it is likely that an application would have been made to extend the time limit on a case-by-case basis and many of those currently being held on remand would have been held on remand in any event, if the court had extended the time limit in their case.

#### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

#### Competition Assessment

There is no need for a competition assessment.

#### Consumer Assessment

There is no need for a consumer assessment.

### Test run of business forms

There is no current need for the test run of business forms. This provision has not resulted in the creation of any new forms for businesses etc. to complete.

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

The provisions have been in operation since April 2020.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

## 7. Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

### Benefits

The provision under schedule 4, paragraph 11 of the Coronavirus (Scotland) Act 2020 allows evidence by statement where there would be a particular risk to the person's wellbeing attributable to coronavirus or a particular risk of transmitting coronavirus to others if they were to physically attend the trial and where it is not reasonably practicable for the person to give evidence in any other competent manner. This should reduce the risk that a trial cannot proceed because a witness is unable to attend court because of a risk attributable to coronavirus and where it is not possible for them to give evidence by any other means (e.g. by video-link).



## Costs

By increasing the power of the Court in relation to admissibility of statements under section 259 of the Criminal Procedure (Scotland) Act 1995 there may be a small increase in administrative costs associated with the relevant procedure, this may be offset by a reduction in witness expenses and, potentially, the need to re-schedule trials in cases where witnesses are unable to give evidence in person for a coronavirus-related reason and where it is not possible for them to give evidence in another way.

## Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

## Competition Assessment

There is no need for a competition assessment.

## Consumer Assessment

There is no need for a consumer assessment.

## Test run of business forms

There is no current need for the test run of business forms. This provision has not resulted in the creation of any new forms for businesses etc. to complete.

## Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

## Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

## Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

## Implementation and delivery plan

The provisions have been in operation since April 2020.

## Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

### 8. Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

#### Benefits

Extending these provisions is proportionate and necessary to help ensure that justice social work can operate effectively in current circumstances and ensure that individuals on orders have sufficient time to complete unpaid work or other activity requirements. The provisions also have the benefit of providing flexibility to ensure that if the justice system was at significant risk of being overwhelmed, system-wide action could be taken to ease pressure in relation to delivery of community payback orders.

While additional funding for justice social work services has been allocated and areas are increasing capacity and planning service delivery to meet demand, significant uncertainty remains, not least relating to any potential further impact of coronavirus.

Current advice from justice partners suggests that a scenario of court disposal capacity exceeding community justice capacity in the months ahead is a realistic prospect and therefore presents an ongoing risk. While the Scottish Government is working with national justice partners to mitigate this risk as far as possible, an increase in court capacity is considered necessary in order to begin to address the backlog of criminal cases, which is clearly in the interests of individuals with cases pending, victims, and the operation of the justice system.

As a result of a combination of capacity issues and potential further developments arising from the pandemic, the extension of these provisions is considered necessary to enable the flexibility to take proportionate action to ease pressure on the community justice system should this be required.

#### Costs

The extension of these provisions does not create additional costs on the Scottish Government. The provisions mitigate risk to the Scottish Courts and Tribunal Service and may prevent additional breach or review hearings being needed in relation to community payback orders with unpaid work or other activity requirements which

cannot be completed within specified timescales or if capacity issues mean that individuals cannot complete orders through no fault of their own.

The power to vary orders would not increase costs to local authorities and while there are no plans to use the power, it would be subject to affirmative procedure and specific impact assessments including a Business and Regulatory Impact Assessment would be prepared.

There are no additional costs to other bodies, individuals and businesses, however, there is a possibility of increased workload immediately post-crisis for organisations linked to the delivery and oversight of community orders, including third sector bodies. It is not possible to quantify this at present.

#### Scottish Firms Impact Test

There is not considered to be an impact on Scottish businesses or consumers as a result of extending these temporary provisions.

#### Competition Assessment

The extension of these temporary provisions will not have any impact on competition.

#### Consumer Assessment

The extension of these temporary provisions will have no direct impact on consumers.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

The Scottish Government will continue to monitor the impact of coronavirus on justice social work services and delivery of unpaid work, taking account of volumes of court business and the impact of remaining public health restrictions. At present, there are no plans to use the powers to vary community payback orders.

There are no enforcement or sanctions relating to the provisions.

#### Implementation and delivery plan

The extension of the 12 month minimum timescale to complete unpaid work or other activity requirements does not require additional implementation planning as the provision is currently in place.

If any plans were needed to use the powers to vary orders, a plan would be developed and shared with relevant partners. However, there are no current plans to use the powers.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 9. Parole Board (Section 5 and schedule 4: paragraphs 17 and 18(1) and, (3) of the Coronavirus (Scotland) Act 2020)

##### Benefits

The provisions have allowed the Parole Board to continue to operate almost unaffected by the pandemic. The provisions will allow parole hearings to continue to be held by video/tele conference rather than being delayed/postponed which could incur additional costs. The delegation powers relating to the Chair will also provide the necessary resilience needed to carry out the Chair's/members functions should they become incapacitated for any reason.

##### Costs

The carrying on of those hearings which take place via video/tele conferencing rather than being carried out face-to-face, the provisions for the functions of the 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.

##### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

##### Competition Assessment

The extension of these temporary provisions will not have any impact on competition.

#### Consumer Assessment

The extension of these temporary provisions will not have any impact on consumers.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

The extension of the provisions does not require additional implementation planning as the provisions are currently in place and operating efficiently.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

10. Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

#### Benefits

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

During May-June 2020, the Scottish Government instructed the early release of a limited number of prisoners under the powers established in the 2020 Act. The specific criteria of the process were set out in The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 for the approval of the Scottish Parliament, leading to the release of 348 prisoners in the 28 days starting on 4 May 2020. All these prisoners had been serving sentences of 18 months or less, and all were within 90 days of their scheduled date of release. Individuals who were subject to long sentences, or post-release supervision orders were excluded.

The previous instances of early release was vitally important to help the prison service and NHS staff to continue the safe operational running of prisons. Early release provided vital additional capacity, physical space and service provision, for Scottish prisons at this time, and allowed for greater use of single cells, which supported the work of the Scottish Prison Service (SPS) as they worked to maintain a safe custodial environment.

Whilst acknowledging the systems that the SPS have in place to mitigate the virus threat to the health of prison staff and prisoners, there remains a real concern that future coronavirus developments, including new variants, could still create circumstances that would require Ministers to instruct its use (in the absence of other powers to give effect to release in this way). The Scottish Government has not instructed a further use of the early release power since May 2020, but has consistently indicated in dialogue with the SPS and other stakeholders that the option would remain under consideration and that it could still be deployed if conditions justified it in the future.

As in the May 2020 process, any future use of the power would see the number of individuals released limited to what was considered necessary and proportionate to the circumstances at that time. As before, releasing individuals who are close to their scheduled release date would move any related activity, and any costs or benefits, ahead in time, and concentrate them in a shorter period of time. Most costs incurred for releasing prisoners at that point would have been incurred in any case, when the individual was released at their scheduled date. The potential effects would need to be considered in the context of a matching reduction in activity and impact over the following period, when those individuals would have been released. Furthermore, any potential benefits and costs from the administration of the release process would have to be considered in the context of the wider disruption of public services caused by coronavirus at that time.

If a further early release were instructed there may be some marginal associated financial benefits:

- The cost to the prison service for housing and supporting individuals would be reduced, due to individuals being released ahead of their scheduled release date. (The indicative savings which SPS have modelled are approximately £7 per prisoner, per day, comprising various expenses including food and wages

for prisoners. It is recognised that these are far lower than the total costs of imprisonment, but most of these savings could not be recovered due to the fixed nature of many costs.

- There are some potential savings in relation to electronic monitoring. It is assumed that some short sentence prisoners who would have applied to receive Home Detention Curfew (with associated electronic monitoring costs) would receive emergency release without electronic monitoring. The savings from electronic monitoring would be influenced by the size of this cohort of people as well as unit costs for electronic monitoring. Current contract costs (which may be revised) are an average daily cost of approximately £8 per monitored individual, with a one-off charge of £30 for the combined activities of install/de-install.

### Costs

An assessment of the previous early release process can only provide limited evidence of the financial impact of a potential future application of these powers. Certain costs and savings to the Scottish administration could be derived from a future early release process, in the main areas set out below. However, additional costs for supporting individuals released earlier into the community should be considered in the context of the reduced costs to the Scottish Prison Service to support them in custody.

- Costs for any increase in demand on local authorities for the delivery of voluntary throughcare support to help short sentence prisoners reintegrate after release from prison. The scale of this change will vary widely, given that only a small minority of prison leavers choose to request this support (1700 in 2018-19 for the whole of Scotland), and the content of the services provided will vary between local authorities.
- Costs associated with local authority housing services will be affected by changes to the release of individuals from prison, given that around 30% of prison leavers have no confirmed accommodation before their release, and an estimated 10% of the homeless population are prison leavers.
- A high proportion of all prisoners will claim state benefits once they are released, and are more likely to be in severe poverty and reliant on benefits than the general population – including those that would be released from custody due to an early prisoner release process. As a result, it is likely that any cohort of prisoners that are released early will produce a cost to benefits services for the period between the dates of those prisoners release, and their initial scheduled release dates.
- The Scottish Government funds two national offender throughcare services (“New Routes PSP” for male short-sentence prisoners, “Shine PSP” for women prisoners, women remand prisoners and women on community sentences), which have a specific remit to offer individuals leaving prison a flexible service starting whilst in custody, and continuing after release for

around 6 months. These services are delivered by a network of third sector organisations, delivering a standardised process. (The Scottish Government issues annual funding to these two services (plus a third specialist service), at a total of £3.7 million per year. These services have previously supported c2,000 individuals per year. In the May 2020 early release process, the SPS utilised their existing data-sharing and co-ordination links with these services, as well as with local authorities, to inform them which prisoners would be granted early release. This enabled services to adjust plans to engage with prisoners signed up for their services. During the previous early release, the budget/resource impact arising from the early release process was accommodated within their annual grant funding allocated by the Scottish Government.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

There is no current need for a competition assessment.

### Consumer Assessment

There is no current need for a consumer assessment.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

There is no current need for a Legal Aid Impact Test.

### Enforcement, sanctions and monitoring

Under the previous early release, plans for the release process were worked out in advance with local government, housing services and the third sector. Specifically, the process was planned and implemented in co-ordination with the SPS, Social Work Scotland, COSLA, Association of Local Authority Chief Housing Officers, NHS Boards, third sector organisations, and other partners. SPS made publically available, for each week of operation, the number of prisoners who had been released under these provisions together with certain associated demographic



information. It is likely that if an early release was initiated again under the proposed legislative provisions, that this approach would be followed.

### Implementation and delivery plan

The Scottish Government continues to regularly confer with the Scottish Prison Service about the current operational position, including any potential application of emergency release, and there is regular dialogue between the Cabinet Secretary of Justice and the Interim Chief Executive of SPS. The issue is also included in the wider consideration of the justice sector's response to Coronavirus, through the operation of the Criminal Justice Board established to lead the Recover, Renewal and Transformation programme for justice operations (which includes representation from stakeholders across the justice sector).

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

## 11. Legal Aid (Section 5 and schedule 4: paragraphs 21 – 23 of the Coronavirus (Scotland) Act 2020)

### Benefits

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. Extending the ability to make payments in this way, beyond 30 September 2021, will continue to support cash flow to legal aid providers.

### Costs

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 only facilitate that fees that are liable to be met from the Legal Aid Fund are paid sooner than they would be otherwise. There are 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 receives reports from SLAB on the uptake of the interim fee arrangements .

### Scottish Firms Impact Test

Representative bodies for solicitors and counsel welcomed the introduction of these provisions, and many legal aid providers make use of these feeing arrangements. In

2020/21, 59% of civil firms and 47% of firms offering solemn criminal legal assistance received interim payments from the legal aid fund.

41% of active civil firms in 2020/21 have not used interim civil fees in 2020/21.

#### Competition Assessment

There is no current need for a competition assessment.

#### Consumer Assessment

There is no current need for a consumer assessment.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these provisions does not give rise to an immediate impact on the legal aid fund. The provision increases the availability of interim Legal Aid payments to solicitors and advocates is designed to be cost neutral to the legal aid fund.

#### Enforcement, sanctions and monitoring

The Scottish Legal Aid Board monitors the use of interim payments from the legal aid fund, and these provisions enable recovery of any overpayment of interim fees or outlays paid a legal aid provider.

#### Implementation and delivery plan

The extension of this provision maintains the present legislative arrangements, so no implementation is required.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remain necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

12. Alcohol licensing (Section 6 and schedule 5 of the Coronavirus (Scotland) Act 2020) and Licensing other than alcohol licensing (Section 7 and schedule 6: paragraph 1 of the Coronavirus (Scotland) Act 2020)

Benefits

The Coronavirus (Scotland) Act 2020 Act provided necessary discretion and flexibility for Licensing Boards, licensing authorities, licence holders/applicants (i.e. businesses) and others who engage with the licensing systems under the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982.

Extending this discretion and flexibility, beyond September 2021, means that Businesses (as users of the licensing systems) will continue to benefit from, for example, extended deadlines during the application processes and, for instance, in undertaking required training, and from the ability of the Licensing Boards/authorities to exercise discretion so as not to hold in person hearings and to instead provide alternative means for persons to be heard by telephone, video-conferencing or by written communication (including electronic communication).

Extending the licensing provisions will assist all users (including businesses) of the licensing systems to be able to react quickly to any further coronavirus related restrictions thus enabling the licensing systems to continue functioning. This will minimise, as far as is practical, licence holders (for example within pubs/licensed restaurants or taxi/private hire car drivers) and other key licensing interests (for example, Police Scotland, Licensing Boards/authorities) being adversely affected as businesses try to recover from the impact of coronavirus.

Additionally, extending the licensing provisions means that the licensing authorities will be able to support new businesses (for example convenience stores) who are starting up due to Licensing Boards having the discretion to consider alcohol applications through the vehicle of a remote hearing.

Costs

The Scottish Government does not anticipate any extra costs for business as a result of extending the licensing provisions.

Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

Competition Assessment

The Coronavirus (Scotland) 2020 Act provided necessary discretion and flexibility for Licensing Boards, licensing authorities, licence holders, applicants and others who engage with the licensing systems under the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982 to enable the licensing regime to function effectively. Given that all licence holders and applicants benefit from these

provisions, the Scottish Government does not consider these provisions prevent, restrict or distort competition in any of the affected markets.

### Consumer Assessment

Licence holders and applicants who use the services provided by the Licensing Boards and licensing authorities and individuals who, for example, use licensed premises or taxis/private hire cars will not be adversely impacted by the extension of the licensing provisions.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The Coronavirus (Scotland) 2020 Act provided necessary discretion and flexibility for Licensing Boards, licensing authorities, licence holders, applicants and others who engage with the alcohol and non-alcohol licensing systems under the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982. These changes relate to (mainly) administrative matters such as extending deadlines for the submission of certain licence applications/renewals or the ability to hold other than “in person” hearings.

The day to day administration of the licensing regimes in Scotland rests entirely with the independent Licensing Boards and licensing authorities who already have compliance and monitoring systems in place for their administration of the licensing regimes. The Scottish Government will continue to engage with a number of key licensing stakeholders including representatives of SOLAR’s (Scottish Local Authority Lawyers and Administrators) licensing sub-committee, the Law Society of Scotland’s licensing sub-committee and legal experts in licensing law as well as Licensed Trade representative bodies throughout the duration of the coronavirus pandemic

### Implementation and delivery plan

As discussed above, the day to day administration of the licensing regimes in Scotland rests with the independent Licensing Boards/authorities. These bodies will be responsible for implementing the licensing provisions which extend the discretion

and flexibility provided by the Coronavirus (Scotland) Act 2020 beyond September 2021. The Scottish Government will continue to engage with key stakeholders – including Licensing Board/authority staff and various representative bodies – as the Bill progresses through the parliamentary process. This will allow for Licensing Board/authority websites to be updated with relevant information and for Licensed Trade representative bodies, Taxi/Private Hire representative bodies and the Law Society of Scotland, to disseminate information to their respective memberships.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 13. Freedom of Information (Section 7 and schedule 6: paragraphs 2 and 7 of the Coronavirus (Scotland) Act 2020)

##### Benefits

This provision enables the Scottish Information Commissioner and Scottish public authorities to issue formal notices under the Freedom of Information (Scotland) Act 2002 (FOISA) electronically. Prior to the Coronavirus (Scotland) Act 2020, FOISA provided that these notices required to be delivered or posted to the recipient (section 74(1)(a) of FOISA). The extension of this provision ensures that this flexibility remains available to the Commissioner and authorities.

##### Costs

The Scottish Information Commissioner and Scottish public authorities are likely to make small savings as a result of not incurring printing and postage costs.

##### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself. In any event, the expiry of the provision only affects Scottish public authorities. Most authorities are neither businesses nor consumers.

##### Competition Assessment

There is no need for a competition assessment.

##### Consumer Assessment

There is no need for a consumer assessment.

### Test run of business forms

The extension of this provision will not result in the introduction of any new business forms, so there is no current need for the test run of business forms.

### Digital Impact Test

No digital impact test is required. The extension of this provision does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of this provision does not give rise to any impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The extension of this provision continues the current discretion that the Scottish Information Commissioner and Scottish public authorities have to issue certain notices electronically. No enforcement is required.

### Implementation and delivery plan

The extension of this provision simply maintains the present legislative arrangements, so no implementation is required.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

### 14. Freedom of Information (Section 5 and schedule 4: paragraph 12 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

This provision requires the Scottish Ministers to report on their FOI performance to the Parliament every two months while Part 2 of schedule 6 of the Coronavirus (Scotland) Act 2020 is in force. It is the Scottish Government's intention that while paragraph 7 Part 2 of schedule 6 of the Coronavirus (Scotland) Act 2020 remains in force, so should this provision.

### Costs

The extension of this provision will result in minimal further costs (approximately £1,000) for the Scottish Ministers only.

### Scottish Firms Impact Test

The provision has no impacts on anyone other than the Scottish Ministers.

### Competition Assessment

There is no need for a competition assessment.

### Consumer Assessment

There is no need for a consumer assessment.

### Test run of business forms

The extension of this provision will not result in the introduction of any new business forms, so there is no current need for the test run of business forms.

### Digital Impact Test

No digital impact test is required. The extension of this provision does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of this provision does not give rise to any impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The provision requires the Scottish Government to lay a report before the Scottish Parliament. No further enforcement or monitoring is considered necessary.

### Implementation and delivery plan

The extension of this provision simply maintains the present legislative arrangements, so no implementation is required.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

15. Duties in respect of reports and other documents (Section 7 and schedule 6: paragraphs 8 – 10 of the Coronavirus (Scotland) Act 2020)

Benefits

The provisions allow public authorities to postpone publishing certain reports on their activities if the act of doing so would impede their ability to take action against the coronavirus, and then carry out the publication at a later date or publish a statement to explain why not doing so. 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 provisions allow them instead to make it available online. This allows business to continue at any time while offices and libraries are closed; otherwise some important work by public authorities would have had to stop or be excessively delayed. Particular examples have been identified in terms of information about council meetings and committees, in the planning system and for environmental assessments. The provisions require that each individual use of these provisions be subject to judgement by the public authority, so normal publication requirements will continue when that is appropriate.

Costs

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

Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself. Informal discussions and feedback from some representatives of businesses which participate in the planning system has identified the importance of maintaining the availability of information through online means, and so maintaining planning processes and ensuring decisions continue to be made by authorities in support of future investment in development.

Competition Assessment

No competition assessment is required.

Consumer Assessment

These provisions protect public access to information about the work of public authorities while action is taken to reduce spread of the virus, in the interests of openness and accountability. There may be some temporary limiting of access to published information for those for whom it is more difficult to access it online. To maintain public services, the alternative would have been to remove publication requirements entirely, which would have denied people the opportunity to scrutinise



public bodies' business and decision-making, and which would not have been an acceptable option.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

These provisions facilitate public authorities' continuing ability to comply with statutory requirements placed on them. The exercise of the powers is a matter for the consideration of the authority in the circumstances. Given the aim of reducing undue burdens, it would be disproportionate to request authorities to report on the individual uses of these powers.

#### Implementation and delivery plan

These provisions are currently in place and continue to be required to ensure public authorities can appropriately maintain public services at any time when efforts to suppress the virus would otherwise have prevented their compliance with certain statutory requirements.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 16. Local Authority meetings (Section 7 and schedule 6: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020)

##### Benefits

These provisions allow local authorities to exclude the public from local authority meetings on the basis that the presence of the public constitutes a real and

substantial risk to public health relating to coronavirus. In addition, the requirement to provide hard copies or extracts of a document requested by a member of the public in their offices will only be provided if it is reasonably practicable and will no longer be compulsory.

The provisions ensure that local authorities can continue to function and conduct committee business while simultaneously taking action to reduce and suppress the spread of the virus.

### Costs

Local authorities are likely to make small savings as a result of not incurring printing charges for providing hard copies or extracts of documents. Enabling local authorities to exclude the public from their meetings is not expected to impose any additional costs.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

These provisions protect the public from the risk of transmission of Covid-19 at physical meetings. All 32 councils now have arrangements in place for remote meetings and the majority of council's are live streaming these meetings to the public so they can still watch the deliberations. The shift to a virtual meeting environment and, only being able to access documents online, could have a disproportionate impact on older people, people with disabilities or members of the public who do not have the infrastructure or skillset to access public meetings remotely. However, some of these groups are also identified as being at greater risk from the virus. As restrictions ease and people once again meet more often in person, local authorities will have to regularly assess the level of risk with a view to allowing public access to meetings again when it is safe to do so.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

These provisions facilitate local authorities continuing ability to comply with statutory requirements placed on them. The exercise of the powers is a matter for the consideration of the local authority in the circumstances. Given the aim of reducing undue burdens, it would be disproportionate to request local authorities to report on the individual uses of these powers.

#### Implementation and delivery plan

These provisions are currently in place and continue to be required to ensure local authorities can appropriately maintain their committee meetings at any time when efforts to suppress the virus would otherwise have prevented their compliance with certain statutory requirements.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

17. Duration of planning permission (Section 8 and schedule 7: paragraphs 8 – 10 of the Coronavirus (Scotland) Act 2020) and Listed buildings and conservation areas: consents (Section 5 and schedule 4: paragraph 2 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

The Bill will have the effect of extending provisions which provide that where a full planning permission or planning permission in principle would expire during the relevant period – the “emergency period” which currently ends on 30 September 2021 - then that permission would not lapse until after expiry of the “extended period” which currently ends on 31 March 2022, irrespective of that development having not been commenced. The permission would only lapse if development has not commenced before the end of the extended 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.

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the Listed Buildings Act”) requires listed building consent for works to listed buildings and conservation area consent for the demolition of buildings within conservation areas. The provision amends section 16 of the Listed Buildings Act to extend the duration of a listed building consent or a conservation area consent that would otherwise lapse during the emergency period because works authorised by the consent have not begun. Consents to which the provision applies will instead lapse at the end of an extended period (which ends on 6 April 2021) unless works have commenced before the end of the extended period.

The Coronavirus (Scotland) Act 2020 includes provision for extending the duration of planning permissions. This measure has the effect of bringing heritage management consents procedures in line with planning permissions and avoids complaints or challenges from applicants who are unable to commence works as a result of current restrictions.

### Costs

The Scottish Government does not expect this measure to lead to any additional or increased costs and no additional costs have been highlighted or identified since the provisions were introduced in April 2020

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.

It is not expected there will be any financial impact as a consequence of extending the duration for listed building consents and conservation area consents that would otherwise be due to lapse during the emergency period.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

No consumer assessment is required.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

The extension of this provision simply maintains the present legislative arrangements, so no implementation is required.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

18. Land registration: electronic delivery of copies to Registers of Scotland (Section 8 and schedule 7: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020 and Section 5 and schedule 4: paragraphs 3-4 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

The provisions on electronic submission allow people, in practice through their solicitors, to continue to submit applications for registration in the Land Register, Register of Sasines, Register of Inhibitions and Register of Judgments to Registers of Scotland while they are unable to receive applications by post. In respect of the property registers (the Land Register and Register of Sasines), these measures support the property market by allowing people who transact in this period to continue to obtain the benefits offered by registration in the property registers as they normally would; namely creation of a real right enforceable against third parties and warranty of title (for Land Register applications) given by the Keeper.

In respect of the Register of Inhibitions, they provide creditors a route to recovery of debt that they would otherwise normally be able to access, but cannot, due to ongoing public health guidance.

In terms of the Register of Judgments they provide parties with the continued ability to register judgments from outwith Scotland or obtain certificates, meaning these can be recognised and enforced in Scotland.

### Costs

In respect of the provisions within the Bill related to the functions of the Keeper of the Registers of Scotland, additional functionality was introduced to the Keeper's existing online services following commencement of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020. Registers of Scotland anticipate no significant additional development costs. 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 are expected to continue to be offset by the savings from not using a mail service.

### Scottish Firms Impact Test

For users of the services (primarily the legal profession) any additional costs incurred through submitting electronically are expected to continue to be offset by the savings from not using a mail service.

The Keeper on behalf of Scottish Ministers publicly consulted on introducing, on a permanent basis, the digital submission measures originally introduced by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020. The overwhelming view of respondents was positive, with in excess of 93% of responses in favour of retaining the ability to submit digitally with ease of use, as well as time and costs savings cited as benefits.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

No consumer assessment is required.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. 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

Registration of copy deeds in the Register of Inhibitions and Register of judgments by electronic submission will make use of pre-existing systems and services offered by the Keeper, modified as required. These will be primarily submitted by existing users of the Keeper's other systems such as solicitors, sheriff officers and trustees in sequestration etc.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

Registers of Scotland have prepared guidance on these provisions and how they will work in practice. The guidance has been published on Registers of Scotland website.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a

statement that Ministers are satisfied that the status of those provisions is appropriate.

19. Scrutiny of subordinate legislation in urgent cases (Section 8 and schedule 7: paragraphs 23-30 of the Coronavirus (Scotland) Act 2020)

Benefits

These provisions enable accelerated timetabling of regulations that would normally be made under the affirmative procedure where this is necessary by reason of urgency. They do so by providing for regulations to be progressed under the made affirmative procedure (which is the process that has been needed to be used for urgent Covid-related health protection regulations), which enables regulations to be brought into force immediately but only remain in force if parliamentary approval is secured. The impact of extending this provision solely affects the Scottish Government.

Costs

The extension of this temporary provision is not expected to impose any additional costs.

Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself. However, there is not considered to be an impact on Scottish business or consumers as a result of the extension of these temporary provisions.

Competition Assessment

No competition assessment is required.

Consumer Assessment

No consumer assessment is required.

Test run of business forms

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

Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

Legal Aid Impact Test



The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

No implementation or delivery planning is necessary. The provisions have been in force since April 2020.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament will follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remain necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

20. Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) which are being expired)

#### Benefits

These provisions temporarily provide for a 28 day notice to leave period for students in student residential tenancies while the Coronavirus (Scotland) (No. 2) Act 2020 is in force.

The extension of these measures will ensure that students who left their accommodation, or have been unable to return to it, due to Coronavirus restrictions and who wish to end their contract early, are able to do so. They also give students looking to find suitable accommodation for the next academic year reassurance that should restrictions continue and they are unable to take up the accommodation as planned, that they will not be forced to pay for accommodation they are not using for a full academic year. The 28 day notice to leave period provision brings PBSA notice to leave periods in line with the rest of the Private Rented Sector. The provisions previously created a 7-day notice period for student residential tenancies entered prior to 27 May 2020 but that part of the provisions is being expired on 30 September 2021.

## Costs

The costs associated with the extension of these provisions are dependent on the individual circumstances of students and accommodation providers as well as the severity and duration of the pandemic.

- **Students** – the Scottish Government does not expect any additional financial implications for students by continuing their temporary right to give their landlord a 28 day notice to leave their accommodation contract.
- **Universities and colleges** – The Scottish Government understands that in 2020/21 all universities and colleges have voluntarily allowed the early release of students in accommodation they provide in this academic year. There will be costs for universities and colleges should it be necessary for students to end (using the 28 day notice provisions) accommodation for the new academic year early. It is difficult to assess this given the uncertainty around what impact, if any, there will be the start of the new academic year and whether institutions will seek to delay contracts starting in response. No official statistics are available on the average rental costs for university and college accommodation. It is therefore difficult to assess the financial impact of these measures in the time available, however, research suggests that the UK average weekly rent per person in university accommodation is £137. Based on this average weekly rent, for every 100 students who are released from contract early it is estimated to cost the sector around £55,000 per 4 week period.
- **Purpose built student accommodation (PBSA)** –The majority of student accommodation contracts align with the academic term and therefore end around mid to end June. Research suggests that the UK average weekly rent per person in private halls is £126. This could equate to around:
  - Based on a 1 to 2 months void period due to a delay in the start of the academic term, a loss of between around £500 and £1,000 per student who gives their landlord a 28 day notice to leave.

Due to the uncertainty around how the pandemic may evolve, continuing public health measures will be kept under review in the event of new developments, such as the emergence of a new variant of concern, to ensure that they remain proportionate and necessary. The potential impact on student learning opportunities and methods (restricted blended or blended) means it is difficult to assess the true costs to the sector.

There may also be some additional administration costs for providers related to the return of any money paid by the student where upfront rental payments have been made. Given the variation in contracts and the time available it has not been possible to quantify these costs.

## Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

As these provisions apply equally to all providers of purpose built student accommodation and halls of residence, they are unlikely to have any impact on competition.

### Consumer Assessment

Provisions to enable students living in purpose built student accommodation and halls of residence to give their landlord 28 days' notice to leave provide increased protection for consumers during the pandemic.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The Scottish Government will work with key stakeholders including those representing students and accommodation providers through their student accommodation group to share guidance and monitor the impact of these measures.

### Implementation and delivery plan

Guidance for students and affected accommodation providers will be updated as soon as feasible following completion of the Bill. This will ensure that students and those providing purpose built student accommodation and halls of residence can access information about their amended rights and responsibilities during the period to which these amendments apply.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a

statement that Ministers are satisfied that the status of those provisions is appropriate.

21. Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

More tenants in the private rented sector continue to find themselves in financial difficulty due to the current outbreak and are unable to meet their obligations under their tenancy agreement. Uncertainty regarding the impact on finances and employment will continue through the recovery from the pandemic. There is a risk that some tenants may not be aware of possible support and the extra protections currently in force. By requiring landlords to support their tenants the need for re-possession action is lessened, if the tenant is able to receive support and make rent payments. Retention of current tenants and steady receipt of rent, including any managed payment of arrears, is in landlords interests.

### Costs

It is not anticipated that the extension of the pre-action requirements will result in any additional costs for private tenants. There may be some cost saving for tenants where the pre-action measures are successful in helping to sustain the tenancy, for example in relation to moving costs. The exact savings will depend on the individual circumstances of the tenant.

In relation to private sector landlords, any additional costs for landlords resulting from the extension of these measures will depend on current practice. However, as outlined in the Business and Regulatory Impact Assessment for the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, it is not considered that the introduction of the pre-action requirements will necessitate landlords to undertake significant actions that generate any specific, additional costs beyond those that may occur in relation to seeking repossession of a property. There may also be costs savings for private landlord where the pre-action requirements are successful in sustaining a tenancy and facilitate the repayment of arrears.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

This provision only applies to the private rented sector, tenants in the social rented sector already have similar existing provisions regarding support for tenants experiencing difficulties. As these provisions will apply equally to all private

landlords, extension of these measures is not assessed as having any impact on competition.

### Consumer Assessment

This provision enhances the rights and support of tenants as the consumer.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The granting of evictions is currently a matter of discretion for the First Tier Tribunal. In such considerations the Tribunal will consider the reasonableness of the eviction, including the landlord's performance of the pre-action requirements. Where landlords have not met these temporary obligations it is likely that the Tribunal will not grant the eviction.

### Implementation and delivery plan

These provisions are currently in place and supporting guidance and stationary has made available via the Scottish Government's website.

### Post-implementation review

The Scottish Government is currently reviewing the effectiveness of Pre-Action Requirements. The review will involve the PRS Resilience Group and housing stakeholders including those representing landlords, tenants and providing advice and advocacy services.

## 22. Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

For the social care workforce, access to the Staff Support Fund prevents them from experiencing financial hardship if they are absent from work due to having suspected or confirmed coronavirus, or because they are self-isolating in line with Scottish NHS

guidance or specific social care infection prevention and control guidance where this exists.

This policy also supports wider infection prevention and control policies by removing any anxiety about testing among the workforce due to potential financial detriment. This benefits workers themselves and also the people they care for.

### Costs

There are financial implications for the Scottish Government. Comprehensive information is not yet available because payments are being made by Integration Authorities to social care providers for a number of additional COVID-19 related costs. These cannot always be separated, however the Scottish Government estimates the full year of the Social Care Staff Support Fund to be in the region of £7-9 million. It is difficult to forecast the use and therefore cost of this Fund going forward as it depends on staff absence rates relating to coronavirus. The Scottish Government is aware that the Fund continues to be utilised.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

It is the view of the Scottish Government that this policy will not impact negatively on competition within the social care sector.

### Consumer Assessment

It is the view of the Scottish Government that there will be no negative impact on social care service users. This policy will have a positive impact on them, supporting infection prevention and control within social care settings.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

The Scottish Ministers will maintain and administer the Fund until Part 1 of the Coronavirus (Scotland) Act 2020 is no longer in force. Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

Communications will be issued via Scottish Government stakeholder networks to care providers and the social care workforce to raise awareness of the extension of the Fund, should the Bill be passed by the Scottish Parliament.

The Fund is intended to remain operational in line with the duration of the Coronavirus (Scotland) Act 2020.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 23. Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

##### Benefits

These measures provide an increase in the minimum amount that must be owed to a creditor before that creditor can approach the courts to ask that an individual be made bankrupt from the current £3,000 to £10,000. Together with the moratorium extension included in the Coronavirus (Scotland) Act 2020, this is intended to ensure that there is adequate time for those who will be able to repay their debts in time, once they have recovered from the immediate financial shock caused by the economic impacts of the pandemic. There are secondary benefits in reducing the number of such cases coming to the courts and to Accountant in Bankruptcy, allowing these bodies to focus on higher priorities.

The provisions include further measures enabling electronic delivery of documents and virtual meetings aimed at dealing with impact of the physical distancing required in response to the coronavirus outbreak. These will together help insolvency practitioners and Accountant in Bankruptcy take forward casework in a safe, timely and efficient fashion, with resultant benefits to all those involved in those cases.

## Costs

It is not anticipated that the extension of these provisions will result in any additional costs. Electronic delivery of documents and virtual meetings in bankruptcy proceedings will result in a small reduction in administration costs.

## Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

## Competition Assessment

No competition assessment is required.

## Consumer Assessment

The increase in the debt threshold for creditor petition bankruptcy will have a positive impact for consumers as it provides further protection in order to seek advice and an appropriate solution for problem debt. The other measures will have no anticipated impact on consumers.

## Test run of business forms

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

## Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

## Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

## Enforcement, sanctions and monitoring

Enforcement of the increased debt threshold for creditor petition will ultimately be for the Scottish Courts. For example, a creditor petition bankruptcy through the Sheriff Court would not be accepted where the debt levels are below the increased threshold level. Monitoring and reporting of the use of the provisions have been on a bi-monthly basis to the Scottish Parliament

## Implementation and delivery plan

No implementation or delivery planning is necessary. The provisions have been in force since May 2020.



## Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

## 24. Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

Under the Mental Health (Care and Treatment) (Scotland) Act 2003 a patient aged 16 or over may choose an individual to be their named person. A named person represents the interests of and supports a patient subject to proceedings under the 2003 Act. These provisions temporarily remove the requirement for a person to have their signature witnessed by a prescribed person when they agree to become a named person.

While the temporary changes apply to those over 16 and who have a mental disorder, the provisions ensure that patients still have the ability to choose their own named person, while minimising any delays in the process of nomination caused by the pandemic. This in turn will reduce any delays in having the patient involved in their care and treatment decisions.

### Costs

The provisions temporarily remove the requirement for a nominated person to have their signature witnessed by a prescribed person when they agree to become a named person. As such no financial impact is anticipated.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

In the Scottish Government's view, there will be no negative impact on service users. This policy preserves all patient safeguards and ensures that people can continue to be treated and cared for in a way which respects their rights and allows services to be delivered effectively.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

These provisions are currently in place and supporting guidance has made available via the Scottish Government's web-site.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

### 25. Care Homes - Emergency directions and emergency intervention orders (Section 2 and schedule 1: paragraphs 16 – 17 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

These provisions make changes to the Public Services Reform (Scotland) Act 2010 (the '2010 Act') for a limited time period to allow for the issuing of Emergency Directions and Emergency Intervention Orders.

Emergency Directions - Health Boards can direct care home providers to take specific steps within a specified period where they consider there is a material risk to health within the care home due to coronavirus. These specified steps must relate directly to reducing the risk to the health of people at the accommodation. Where the

Health Board is not satisfied that the steps have been complied with, it can, subject to the approval of the Sheriff Court where entry to the accommodation has been refused, take steps to ensure they are carried out.

Emergency Intervention Orders - Ministers may apply to the court to appoint a nominated officer to temporarily take over the operation of a care home if there is a serious risk to life, health or wellbeing within the home for a reason relating to coronavirus. Where there is an imminent and serious risk to life or health, for a reason relating to coronavirus and Ministers consider it is essential to act, they can exercise the powers before making an application to the court. Where any imminent action is taken, Ministers must make an application to a court for an emergency intervention order within 24 hours.

### Costs

Extending these provisions will result in no direct costs or savings to other bodies, individuals or businesses. However, there may be costs for private care home providers in the circumstances that a care home is directed to undertake an action via the Emergency Directions, depending on what the action is. In the exceptional instance that a care home provider does not take the necessary steps in response to a direction, section 63B of the provision allows the Health Board to carry out the steps themselves. To allow the Health Board to do this, they may enter the care home if necessary and recover the costs incurred of carrying out the actions from the provider. The Health Board must apply to the sheriff for a warrant to enter the accommodation and take the specified steps.

In the event that an Emergency Intervention Order is granted by the Sheriff Court or Court of Session, regulation 4 of the Care Homes (Emergency Intervention) (Coronavirus) (Scotland) Regulations 2020 ("the 2020 Regulations) provides that any expenditure incurred by a nominated officer or the Scottish Ministers in relation to intervention under section 65A of the 2010 Act may be recovered from the affected provider.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

As the provision applies to all care homes, it is unlikely to have an effect on competition.

### Consumer Assessment

Emergency directions enable a Health Board to direct care home providers to take specific steps within a specified period where they consider there is a material risk to health within the care home due to coronavirus, thereby providing an additional layer of protection to residents and their families.

Emergency intervention orders provide a safety net for residents of care homes (and indirectly for their families) in that, if needed, swift action can be taken to prevent the serious or imminent risks to the life, health or wellbeing of any person in the care home for a reason relating to coronavirus.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

For Emergency Directions, where the Health Board believes they have not been complied with it can take steps to ensure they are carried out. This is subject to the approval of the Sheriff Court.

The Scottish Ministers must apply to the courts for an emergency intervention order so it is a process which has judicial oversight. Even if the Scottish Ministers decide it is essential to intervene due to imminent risks to the life and health of any person in a care home, before an emergency intervention order can be obtained, they must make an application to a court within 24 hours of taking any such action.

#### Implementation and delivery plan

Any decision to use these provisions will be taken on a case by case basis, in discussion with all relevant parties.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament will follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a

statement that Ministers are satisfied that the status of those provisions is appropriate.

26. Powers to purchase care home services and care at home providers (Section 2 and schedule 1: paragraphs 18 to 21 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

This provision sets out temporary powers available to Local Authorities to acquire, by agreement, a care home or care at home services. It also sets out the powers available to relevant Health Bodies (a Health Board, the Common Services Agency and Health Improvement Scotland) to acquire a care home, by agreement, on behalf of Scottish Ministers.

Circumstances where this can take place are where, for a reason relating to coronavirus: the provider is in serious financial difficulty; the Local Authority or relevant health body is satisfied there is a threat to the life, health or wellbeing of people receiving the service; or where a provider has recently stopped providing the services.

### Costs

Extending these provisions will result in no direct costs or savings to the Scottish Administration, Local Authorities or businesses as specific circumstances must be met before they can be enacted. All selling and purchases of services made under this provisions are voluntary, therefore any costs to private providers will be voluntary.

However, in the event that a relevant Health Body purchases a care home on behalf of Scottish Ministers, agreement between the Scottish Government and the relevant body may be needed regarding any financial support necessary to make this purchase.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

As the provisions can be exercised in relation to all care homes and care at home services, it is unlikely to have an effect on competition.

### Consumer Assessment

The provisions provide a safety net for residents of care homes (and indirectly for their families) that, if needed action can be taken for a reason relating to coronavirus if the care service provider is in serious financial difficulty, the local authority or relevant health body is satisfied there is a threat to the life, health and wellbeing of

any of the people receiving services or the provider has recently ceased to provide those services . If used, these provisions would help to ensure continuity of care by preventing the need to move residents into a new home due to provider financial difficulties.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

Any decision to use these provisions will be taken on a case by case basis, in discussion with all relevant parties.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

27. Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

The provisions remove the time limit on the permitted length of a single adjournment for a report on the offender's physical or mental condition prior to sentencing where an offence punishable with imprisonment has been committed, in summary cases

after first calling where the accused is not in custody, and in all cases to allow inquiries to be made prior to sentencing or pending a decision regarding an alleged breach of a court order. This could result in some savings for the Scottish Courts and Tribunal Service (SCTS) and the Crown Office and Procurator Fiscal Service (COPFS) from reduced numbers of court hearings to seek further adjournments.

### Costs

The provisions which remove the limit on the length of time for which a single adjournment can be made prior to sentencing or pending a decision regarding an alleged breach of a court order could result in some increased costs for the Scottish Prison Service if it resulted in some offenders being held in custody for longer. However, the court can release the offender on bail and is likely to do so where a custodial sentence is not being considered so the impact is likely to be minimal as time spent on remand prior to sentence would be subtracted from the sentence imposed.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

A competition assessment is not required.

### Consumer Assessment

A consumer assessment is not required.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

The provisions have been in operation since May 2020.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament will follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

28. Criminal Justice - Arrangements for the custody of persons detained at police stations (Section 3 and schedule 2: paragraphs 2 – 5 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

These provisions allow Prisoner Custody Officers to provide functions within police stations, enabling the greater use of virtual custody courts where possible. This continued to reduce in the number of transfers to physical courts where appearing before a court using electronic means can be facilitated. Physical transport will still be required to escort people to prisons, but this will be a lower volume than for all custody cases, which would have traditionally been heard in court before any decision to bail or remand was made.

### Costs

The costs incurred from this change continue to be met within the existing contracts for the supply of Prisoner Custody Officers. The use of virtual courts will result in lower costs for transport, which could be used to offset any increases elsewhere.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

A competition assessment is not required.

### Consumer Assessment

A consumer assessment is not required.



### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

The provisions have been in operation since May 2020.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

29. Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

### Benefits

This legislative change allows the court to prevent the expiry of an undertaking and any conditions attached to it by changing the time the person is due to appear at court where a person fails to appear at court in accordance with their undertaking and the court considers such failure is for a reason related to coronavirus and the court does not consider it appropriate to grant a warrant for the person's arrest. In these circumstances the provision provides the court with the power to modify the terms of the undertaking given by changing the time at which the person is to appear at the court. This measure ensures that the undertaking regime continues to operate effectively during the coronavirus outbreak and preserves public safety, especially in

domestic abuse cases where conditions attached to undertakings are of particular importance.

### Costs

It is anticipated any costs associated with this provision are largely notional as there will not be an increase in volume to overall court business as a result of the measure. Instead, what the measure does is provide a power to the court to preserve any protective conditions attached to an undertaking which may otherwise be lost.

There may be minimal legal and administrative costs upon the Crown Office and Procurator Fiscal Service due to the requirement to give notice to the accused of the continuation of an undertaking if the court appoints a new date. There would also be minimal costs to COPFS in notifying Police Scotland of any modification to the date the person is to appear at court and costs to Police Scotland in updating relevant victims and witnesses.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on Scottish firms or competition.

### Consumer Assessment

No consumer assessment is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on Scottish consumers.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

The provisions have been in operation since May 2020.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 30. Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

##### Benefits

The amendment to section 99 of Proceeds of Crime Act 2002 puts it beyond doubt that “exceptional circumstances” in relation to confiscation proceedings under section 92 of the Act includes the effect (whether direct or indirect) of coronavirus on the proceedings thereby allowing the court to extend the permitted period in which proceedings must commence beyond 2 years where it is appropriate to do so for reasons relating to coronavirus. Coronavirus is likely to have an impact on both the Crown Office and Procurator Fiscal Service and defence agents in relation to the proceedings and the ability to seek an extension of the period of postponement is therefore fair to both parties.

Amendments to section 116, new section 116A and amendments to section 117 of POCA ensure that individuals subject to a confiscation order are not treated unfairly and disproportionately due to their inability to pay an order for a reason relating directly or indirectly to coronavirus within the specified period. Without the amendment the court is unable to grant an extension to the permitted time for payment of a confiscation order beyond 12 months from the date that the confiscation order was made. If an accused is unable to pay a confiscation order before the expiry of the permitted time to pay for a reason related (directly or indirectly) to coronavirus they become liable to pay interest on any outstanding and could face a default custodial sentence for non-payment of the order.

##### Costs

There are no additional costs associated with extending this provision.

##### Scottish Firms Impact Test

There is no current need for a Scottish Firms Impact Test for these provisions.

#### Competition Assessment

No competition assessment is required.

#### Consumer Assessment

No consumer assessment is required.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

The provisions have been in operation since May 2020.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

31. Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

The legislative change permits documents which would otherwise have been displayed on the walls of the court to instead be displayed on the Scottish Courts

and Tribunals Service (SCTS) website, thereby enabling the documents to be viewed by the public during a time when people are unable to physically access the walls of court. This is a key measure to provide for the continuation of civil and commissary business, aspects of which would otherwise be unable to proceed during the coronavirus outbreak. There will be benefits realised by online publication of documents primarily because documents will be available to a wider audience.

Within commissary court procedure, it is more likely that any other person who could be appointed executor is more likely to see an online notice and will therefore have the opportunity to make representations to the court at an earlier stage which will reduce costs. In other civil procedures many cases will involve businesses either as pursuer or defender. Where, for example, this is being done in the case of a defender whose whereabouts are not known, then there is an improved chance of finding that person, enabling them to properly defend the claim against them. In terms of benefit for the pursuer, the defender is more likely to be traced online than via walls of court, if the pursuer is successful in having a decree awarded in their favour and the defender came forward to obtain the service copy and enter an appearance, it will be far easier for the pursuer to enforce it.

### Costs

Increased functionality within SCTS IT system has enabled notices to be published directly from the SCTS Integrated Case Management System (ICMS) and has negated previous per annum staff costs which were directly attributable to moving to the manual process of uploading documents onto the SCTS website (estimated at £18,000 ).

It is difficult to identify specific IT development costs (which are solely attributable to the publication of documents on the SCTS website) as the functionality is also being used for other court business conducted under the simple procedure process. Any IT development costs are offset against the advantages realised from maintaining court business and by reduced staff costs and efficiency savings.

As the system is now automated there are no associated operational costs.

### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

No competition assessment is required.

### Consumer Assessment

No consumer assessment is required.

### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

The Scottish Government will continue to request from the Scottish Courts and Tribunals Service regular updates about the use of this provision. Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

#### Implementation and delivery plan

The extension of these provisions does not give rise to any concerns, as the operational process is already established. The provisions have been in force since May 2020.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

32. Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

This temporary provision has enabled the Care Inspectorate to serve electronic notices safely and quickly throughout the pandemic while its offices have been closed. Giving of notice by hand delivery would have also necessitated face-to-face contact, and therefore risked of spread of the virus. Extending this provision allows the Care Inspectorate to continue issuing electronic notices as a faster, safer and more cost effective alternative to physical delivery.

#### Costs

As of 13 May 2021 this provision has been used by the Care Inspectorate in relation to 2,858 matters for the issuing of notices relating to registration, variation of conditions of registration, and enforcement action.

There is no data to quantify a cost saving for extension of this provision, and it is difficult to say with certainty as to how many of these notices would have otherwise been delivered by hand or by post. However, it is likely that some cost savings were made in relation to stationary, postage and physical delivery as well as general time savings.

#### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself. However, the Care Inspectorate, as the lead agency, have been consulted and are supportive of the extension of this provision.

#### Competition Assessment

No competition assessment is required.

#### Consumer Assessment

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

#### Test run of business forms

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

#### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

#### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

The Scottish Government will continue to request from the Care Inspectorate, regular updates about the use of this provision. Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

The extension of these temporary provisions does not give rise to any concerns, as the operational process is already established. The provisions have been in force since May 2020.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

### 33. Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

#### Benefits

The provisions create the opportunity for Scottish notaries public, solicitors and advocates, guided by their professional bodies, to adopt alternative appropriate means of executing documents and oaths etc. which have a “physical presence” requirement. For example, notaries public may now execute remotely, by electronic means such as live video connection. There may be potential for savings to individuals and businesses in relation to associated travel costs as a result of the provisions removing the requirement for “physical presence”, such savings are expected to be minimal. The provisions would place no obligation on Scottish notaries public, solicitors or advocates to facilitate such services by remote means, or to invest in equipment with which to do so. In addition, the provisions support Insolvency Practitioners, as oaths are required in a number of insolvency processes. The provisions enable the legal sector to respond to the impact of the coronavirus pandemic, whilst also support in the recovery from the effects of the pandemic.

#### Costs

The Law Society of Scotland has set out guidance to their members in relation to the use of these provisions, and so any future costs to the Society may be expected to be minimal administrative costs which would be borne by existing operational funds.

#### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.



### Competition Assessment

As the provisions will apply equally to all notaries public, solicitors or advocates to facilitate such services, it is not anticipated to have any impact.

### Consumer Assessment

It is anticipated the provisions will be of some benefit consumers as they allow for alternative means to access such services, whilst aiming to reduce, anxiety, cost and delay for parties.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Legal service providers are bound by the rules and guidance of their regulatory bodies. Monitoring and reporting to the Scottish Parliament on the use of these provisions has been carried out on a two-monthly basis, as required by the Scottish Acts.

### Implementation and delivery plan

The provisions have been in force since May 2020. Should the Bill be passed by the Scottish Parliament, guidance will be updated as soon as feasible.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

34. Council tax: exempt dwellings (Section 5 and schedule 4 paragraph 15 of Coronavirus (Scotland) (No.2) Act 2020)

Benefits

This provision continues the exemption from council tax liability for a property that was exempt from paying council tax due to being occupied by students; a student's spouse or dependant(s); school leavers; or people under the age of 18; and which then became unoccupied on or after 17 March 2020 for a reason relating to coronavirus. From (and including) 27 May 2020 such a property is exempt from paying council tax until it is occupied or the provisions in the Act come to an end.

Extending this provision beyond 30 September 2021 to continue the council tax exemption for properties in this situation will ensure that landlords of such properties are not required to pay council tax due to the impact of the pandemic, when in normal times they would not be doing so due to the property being occupied by one of the specified groups.

Costs

This measure reflects the arrangements that would be in place in normal times, so it is not anticipated that the extension of this provision will generate any additional costs.

Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

Competition Assessment

No competition assessment is required.

Consumer Assessment

No consumer assessment is required.

Test run of business form

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

Digital Impact Test

No digital impact test is required. The expiry of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

#### Enforcement, sanctions and monitoring

Local authorities are responsible for administering council tax in their area. This measure reflects the arrangements that would be in place in normal times, so it is not anticipated that any additional enforcement, sanctions and monitoring will be necessary.

#### Implementation and delivery plan

These provisions are currently in place, and reflect arrangements that would be in place in normal times.

#### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

#### 35. Restriction on giving grant to businesses connected to tax havens (Section 5 and schedule 4: paragraph 16 of the Coronavirus (Scotland) (No.2) Act 2020)

##### Benefits

This provision ensures that businesses with certain connections to tax havens may not receive coronavirus-related grants from Scottish Ministers. This has applied to all grants for which applications were made since 27 May 2020. There is no cost; rather a benefit is conferred on the Scottish Administration by reducing the number of businesses eligible for COVID-19 business supports grants.

##### Costs

Businesses affiliated with a tax haven will suffer the cost of being ineligible for COVID-19 business support grants.

##### Scottish Firms Impact Test

As already noted, due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation with Scottish business or consumers on the Bill itself.

### Competition Assessment

The provision will have an impact on COVID-affected businesses which are associated with tax havens and thereby ineligible for COVID support grants vis a vis non-associated businesses. However, this impact as regards the extension of the application of the provision to March 2022 is not expected to be significant.

### Consumer Assessment

No consumer assessment is required.

### Test run of business forms

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

### Digital Impact Test

No digital impact test is required. The extension of these temporary provisions does not give rise to any immediate or direct impact on technology or technological advances.

### Legal Aid Impact Test

The extension of these temporary provisions does not give rise to an immediate impact on the legal aid fund.

### Enforcement, sanctions and monitoring

Eligibility for the grants at the point of application is self-declared.

### Implementation and delivery plan

The provisions have been in force since May 2020. The Scottish Government Finance Business Partners and COVID teams responsible for administration of the COVID business support grants are being kept updated with the terms of the tax haven provision and the list of tax haven jurisdictions, as defined by the European Commission.

### Post-implementation review

The Scottish Ministers are required to continue reporting on the use of the measures in the Scottish Acts every two months. Those reports to the Scottish Parliament follow a review by the Scottish Ministers of the operation of the provisions in Part 1 of the Scottish Acts for each reporting period to consider whether each provision remains necessary. The report on the review must include the status of those provisions, whether or not any power under a provision has been exercised, and a statement that Ministers are satisfied that the status of those provisions is appropriate.

## **Summary and recommendation**

The purpose of the Bill is to update a range of existing legislative measures which support various aspects of the ongoing response to the public health emergency caused by the coronavirus pandemic.

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 public health requirements and guidance.

## **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: 4 June 2021



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