

Coronavirus (Recovery and Reform) (Scotland) Bill

Business and Regulatory Impact Assessment

January 2022

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Purpose and Intended Effect

What is Being Done and Why

The Programme for Government 2021-22 announced that the Scottish Government would bring forward a Covid Recovery Bill.

The purpose of the Coronavirus (Recovery and Reform) (Scotland) Bill (“the Bill”) is to embed reforms in Scotland’s public services and justice system that, though necessitated by the Covid pandemic, have delivered improvements for service users and improved efficiency.

Overview of Proposal

Further information about the background and the policy intention behind the Bill and also about the existing temporary Covid legislation is set out in the Policy Memorandum which accompanies the Bill. The Bill, Policy Memorandum and other accompanying documents are available from the Scottish Parliament website and are linked to from [this Bill webpage](#).

The sections of this BRIA are structured in the same way as the Policy Memorandum, which broadly follows the structure of the Bill. Where certain provisions have not been mentioned in this BRIA, this is because the Scottish Government has concluded that these provisions would have no significant business or regulatory impact.

Public Health Protection

Modifications of the Public Health etc. (Scotland) Act 2008
Arrangements for vaccination and immunisation

Education

Educational establishments etc.
School consultations

Public Service Reform

Online meetings and hearings

Bankruptcy: remote meetings of creditors
Civic licensing: how hearings may be held
Alcohol licensing: how hearings may be held
Requirements of writing: Disapplication of physical presence requirements
Custody at police stations: Custody officers’ functions

Communicating by phone or online

Bankruptcy: service of documents

Registration of births
Registration of deaths
Civic licensing: how notices may be published
Land registration
Freedom of information: giving notice electronically
Care services: giving of notices by SCSWIS

Miscellaneous

Bankruptcy: meaning of “qualified creditor” and “qualified creditors”
Legal aid and advice: Claim for interim payment of fees and outlays
Mental health: removal of need for witnessing of signature of nominated person
Parole Board for Scotland: Chairperson’s functions

Tenancies

Removal of mandatory eviction grounds
Pre-action protocol in respect of evictions relating to rent arrears

Temporary Justice Measures

Courts and tribunals: conduct of business by electronic means etc. (Documents)
Courts and tribunals: conduct of business by electronic means etc. (Attending a court or tribunal)
Fiscal fines
Failure to appear before court following police liberation
National jurisdiction for callings from custody etc.
Criminal procedure time limits
Proceeds of crime
Prisons and young offenders institutions

Rationale for Government Intervention

In addition to embedding reforms in Scotland’s public services and justice system, the Bill will also help build resilience against future public health threats. Furthermore, the Bill will continue certain temporary justice system provisions on a longer extension basis as part of the Recover, Renew, Transform programme¹ and as a response to the impact of Covid on Scotland’s justice system, most particularly where backlogs have unavoidably built up. The Bill’s provisions demonstrate the Scottish Government’s openness to making legislative reforms that can help respond to the Covid pandemic and support the country’s recovery ambitions.

Consultation:

a) Within Government

Discussions have been on-going within the core Scottish Government and relevant Non-Ministerial Departments and Agencies on the policy proposals that were set out in the public consultation (see below) and also to develop the legislative provisions

¹ [Justice - vision and priorities: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/06/Justice-vision-and-priorities-report-2020-2024.pdf)

within the Bill. These discussions have enabled refinement of the policy proposals and ensured consistency on cross-cutting issues.

b) Public Consultation

The Scottish Government held a full 12-week public consultation between 17 August and 9 November 2021. The consultation paper, entitled “Covid Recovery: a consultation on public health, public services and justice system reforms”², was publicised widely and almost 3,000 responses were received.

370 respondents offered free text responses to the question about the impact on business and regulatory assessment. A full consultation analysis report is available via [this Bill webpage](#).

The consultation analysis report notes that most comments touched on general issues in relation to the specific question about business and regulatory impacts, however a number of respondents gave comments in relation to specific consultation proposals. For example, respondents commented on the potential impact of the public health protection provisions on business, and the potential damage to the economy due to uncertainty, business closures and job losses if such powers were used. Other comments highlighted how the provisions on evictions, debt and justice had impacted landlords’ businesses and reduced rental income. A few comments reflected that online or remote processes can only be effective if everyone has connectivity and access to the equipment needed.

In addition, a targeted Disability Workshop was undertaken to support and inform policy consideration. An online consultation workshop took place on 26 October 2021, jointly hosted with Disability Equality Scotland, and heard from 23 people, including people with lived experience and members/representatives of disability organisations. In relation to tenancies, multiple attendees agreed with the consultation proposals, highlighting the importance of the proposed safeguards. It was suggested that there should be clear limits for both landlords and tenants to ensure that neither party takes advantage of the other. In addition to support for the proposals, concerns were raised regarding the quality and accessibility of housing and there were comments that legislation should go further to ensure greater protection for tenants.

There had also been targeted consultation on specific policy areas, including as follows:

Public Health Protection

In relation to Arrangements for vaccination and immunisation, there has been engagement with healthcare professionals, NHS Boards, Integration Authorities and the Scottish GPC (general practitioners committee).

² [Covid recovery: a consultation on public health, public services and justice system reforms - Scottish Government - Citizen Space](#)

Education

Ongoing engagement with a number of key education stakeholders during the consultation period including representatives of Convention of Scottish Local Authorities (“COSLA”), Association of Directors of Education in Scotland, The Society of Local Authority Lawyers and Administrators in Scotland (“SOLAR”), National Parent Forum for Scotland, the Registrar of Independent Schools, the Scottish Council of Independent Schools, the National Day Nurseries Association, the Scottish Childminding Association, the Children and Young People’s Commissioner Scotland, Children in Scotland, Care Inspectorate, Colleges Scotland, Universities Scotland and the Scottish Funding Council. Those discussions, particularly involving children and young people’s rights organisations, gave key insights on the impact of the Covid pandemic.

Public Service Reform

Bankruptcy – targeted consultation was carried out by the Accountant in Bankruptcy through stakeholder working groups that have been undertaking a wider policy review of Scotland’s statutory debt solutions. The working groups involve 39 stakeholders representing cross-sectoral interests in the area of debt and insolvency.

Alcohol/Civic licensing – officials consulted with the SOLAR licensing sub-committee, the Law Society of Scotland’s (“LSS”) licensing sub-committee and experts in licensing law and trade representatives.

Care services: giving of notices by SCSWIS – regular ongoing dialogue with the Care Inspectorate (also known as the Social Care and Social Work Improvement Scotland “SCSWIS”) and also with care service providers.

Legal aid and advice: Claim for interim payment of fees and outlays – officials consulted with The Scottish Legal Aid Board (“SLAB”), the LSS and the Faculty of Advocates (“FoA”).

Mental health: removal of need for witnessing of signature of nominated person – engagement with relevant stakeholders included the Scottish Government’s Short Life Mental Health Legislation Commencement Consideration Group (this Group consists of the Mental Health Tribunal for Scotland, Social Work Scotland, Mental Welfare Commission, Scottish Courts and Tribunal Service and the Royal College of Psychiatrists).

Tenancies

In addition to the public consultation, there has been informal consultation with public bodies affected by the measures in the Bill and meetings (at official and Ministerial level) with a range of stakeholders including both landlord and tenant representative bodies.

Temporary Justice Measures

Separate discussions with a number of Justice Organisations have also taken place to augment the consultation process, including the Scottish Courts and Tribunals Service (“SCTS”), the Scottish Civil Justice Council (SCJC), the LSS, the FoA and the Scottish Prison Service (“SPS”).

In response to the public consultation there was a general positive consensus amongst justice and legal stakeholders, but there were also negative responses from a number of stakeholders in respect of some of the proposals.

c) Business

There has also been ongoing engagement with business:

Education

In relation to independent schools, there has been regular engagement with the Scottish Council of Independent Schools (“SCIS”), on the policy proposals and to understand the potential financial and business impacts on affected independent schools.

Likewise, for the Childcare sector, there has been regular engagement since the onset of the Covid pandemic, in particular with the provider representative organisations – Care and Learning Alliance, Early Years Scotland, National Day Nurseries Association, Scottish Childminding Association, and Scottish Out of School Care Network have been working closely with the Scottish Government and COSLA, including through the Childcare Sector Working Group. The Scottish Government undertook a survey of childcare providers in June 2020 to better understand the potential impacts of the reopening guidance for childcare services, see summary analysis of survey responses³. In August 2021, the Scottish Government published the Financial Sustainability Health Check of the Childcare Sector in Scotland⁴ and the accompanying Analysis and Evidence Report⁵.

For Higher and Further Education, there has been ongoing engagement with both Colleges Scotland and Universities Scotland.

Public Service Reform

Bankruptcy - Business organisations with an interest in bankruptcy operation and the measures being introduced have been involved in targeted stakeholder consultation. These include creditor organisations and representative bodies, debt advice firms, recovery specialists and insolvency professionals.

Alcohol/Civic licensing - informal discussions with specialist licensing solicitors and trade representatives.

³ [Survey of childcare providers on impact of reopening guidance: summary - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2020/07/20200720_Survey_of_childcare_providers_on_impact_of_reopening_guidance_summary.pdf)

⁴ [Financial sustainability health check of the childcare sector in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/08/20210803_Financial_sustainability_health_check_of_the_childcare_sector_in_Scotland.pdf)

⁵ [Financial sustainability health check of the childcare sector: analysis and evidence - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/08/20210803_Financial_sustainability_health_check_of_the_childcare_sector_analysis_and_evidence_report.pdf)

Requirements of writing: Disapplication of physical presence requirements - key stakeholders supportive; the LSS and The Institute of Chartered Accountants of Scotland.

Land registration - as the professional body for Scottish solicitors, the LSS is supportive of these measures. A public consultation on digital submission was carried out between 22 December 2020 and 1 February 2021⁶. As part of this consultation, the views from 10 legal firms were considered as well as those of a large number of individual solicitors and members of the legal profession. The consistently expressed theme from this engagement was a strong appetite for digital submission to be retained, on the basis that it provides a number of benefits over traditional paper submission. These benefits include increased flexibility in working location and hours (with many solicitors likely to continue working remotely), and increased speed and certainty in the submission process due to the removal of the dependency on postal systems.

Legal aid and advice: Claim for interim payment of fees and outlays - the primary effect of these provisions on businesses is expected to be on solicitor firms and legal practitioners, including counsel. The LSS and the FoA are the representative bodies for such businesses across Scotland that are considered likely to be directly affected.

Tenancies

The Scottish Government has engaged with a range of stakeholders through the Private Rented Sector (“PRS”) Resilience Group which has been set up to provide input to the response to the Covid outbreak and also the Homelessness and Rough Sleeping Action Group. The PRS Resilience Group has a broad membership, intended to represent the interests of those affected by the emergency legislation. The Scottish Government has also engaged with both the Scottish Association of Landlords and Propertymark.

Some individual respondents to the public consultation (who may be private landlords) noted that they may leave the PRS by selling their rental property, as they perceived it would be more difficult to obtain an eviction (if there is discretion), adding to the overall risks in continuing operating within the sector. This view was shared by both landlord representative bodies, and landlords with one property, some of whom may rely on this rental income for their living costs.

Temporary Justice Measures

There has been no direct engagement with non-Justice related organisations or businesses. However, Law Firms, debt recovery firms, the Institute of Chartered Accountants (ICAS) and other businesses responded to public consultation. Of those which made specific comments, these were generally supportive of the

⁶ [Registers of Scotland - A consultation on our proposal to make our digital submissions service permanent](#)

modernisation of the justice system, ICAS commented that “ICAS is fully supportive of the use of technology to improve and modernise processes”.

Options

The following options are set out in the Policy Memorandum for the Bill, which is available from the Scottish Parliament website and is linked to from [this Bill webpage](#).

- i) Allow all temporary legislation to expire. As the Policy Memorandum explains, the Scottish Government does not consider this to be an appropriate approach given the need to build resilience against future public health threats and maintain tangible benefits of modernisations and practices adopted during the pandemic. It would also prove problematic to allow temporary legislation related to the justice system to expire, given the impact of Covid and the backlogs that have built up.
- ii) Introduce all provisions on a permanent basis or introduce all provisions on a longer extension basis. The Policy Memorandum sets out why a more proportionate approach is required.
- iii) Take forward a Bill to introduce provisions on a permanent basis or on a longer extension basis as appropriate.

Option iii) is the Scottish Government’s preferred option and a Covid Recovery Bill was announced in the Programme for Government 2021-2022.

Sectors and Groups Affected

The Bill covers a wide range of provisions and also a wide range of sectors and groups as set out under the Consultation section above.

The bankruptcy provisions will have some impact on stakeholders involved in bankruptcy proceedings in Scotland. These include, but are not restricted to:

- Creditor Organisations – both public authority and private firms
- Indebted individuals
- Debt Advice Agencies/Firms
- Insolvency Professionals
- Accountant in Bankruptcy
- Debt Recovery Specialists
- Scottish Courts

The custody at police station provisions will affect prisoner custody officers, which are currently supplied through a contract with the private sector.

The tenancy provisions will affect PRS landlords in relation to the operation and management of their rental premises. It will also affect their tenants, support organisations and local authorities, particularly related to homelessness services.

Costs and Benefits

Benefits

As set out in the Policy Memorandum for the Bill (available from the Scottish Parliament website and are linked to from [this Bill webpage](#)), the Scottish Government wants to capture the good practice that has helped people during the Covid pandemic, for example where moving to the use of technology, or improving existing digital services, has increased access to services and made them simpler and easier for service users, including businesses.

All of the provisions to enable online meetings or hearings or communicating by phone or online support the Scottish Government's commitment to achieve a 20 per cent reduction in car kilometres by 2030⁷.

Public Health Protection

Modifications of the Public Health etc. (Scotland) Act 2008 – as this section of the Bill contains only enabling powers, the provisions themselves have no immediate impact on sectors and groups. In the event of a future health threat, any regulations made using these powers would require to be accompanied by a BRIA, and it would be at that point that the effect would be measured and set out. However, while these provisions will not have an immediate impact, in the long term, businesses and other organisations are likely to benefit from a more resilient statutory system that can respond to emerging public health threats with the rapidity required. Similarly, while not all public health threats can be foreseen, where a particular threat could be anticipated, these powers would allow Scottish Ministers to lay preparatory regulations setting out, at least as far as possible, measures to respond to it in advance. This would increase certainty for sectors and groups affected, while also allowing robust Parliamentary scrutiny before regulations took effect.

Education

Educational establishments etc. – these provisions also only contain enabling powers which have no immediate effect on sectors or groups. In the event of a future health threat, any regulations made using these powers would require to be accompanied by a BRIA, and it would be at that point that the effect would be measured and set out. The powers are designed to ensure that the education system would be supported so that educational provision is maintained despite the disruption of a public health emergency. The powers also give stakeholders greater clarity about the requirements placed upon them and certainty about how actions will be taken. If the powers in the Bill were used to make regulations to address and

⁷ [A route map to achieve a 20 per cent reduction in car kilometres by 2030 \(transport.gov.scot\)](#)

mitigate an emerging public health issue, it may limit the scope and effect of any wider impact on institutions if public health issues are resolved quickly.

School consultations – the provisions to enable school consultation meetings to be held online and copies of relevant consultation documents sent electronically. This will allow for timely implementation of school infrastructure changes. In the case of major school building projects this will have a significant positive impact on the local economy and result in important improvements to their environmental sustainability and educational outcomes.

Public Service Reform

Bankruptcy - the benefits of increasing the minimum debt level, from consumer and debt advice perspective, is that it will provide greater protection to debtors with lower levels of problem debt. The measure will afford debtors further opportunity to seek solutions and debt advice without the threat of bankruptcy action and the serious consequences arising from it.

In relation to the measures enabling the options for meetings of creditors to take place by virtual means rather than in a physical environment and for documents required during bankruptcy administration to be transmitted to a person electronically, the consultation has highlighted widespread support for the introduction of these measures on a permanent basis. They are considered to be sensible modernising reforms to bankruptcy procedures that will help deliver efficiency savings.

Alcohol/Civic licensing - the provisions do not require that a hearing is held remotely but make clear that licensing authorities or local authorities have the option as to whether a hearing is held in person, remotely or in a hybrid format. In rural areas for example where users may have to travel some distance to attend a hearing then the user will save on travel/time costs if a hearing is held remotely.

The provisions relating to the public notification of Part II and III license applications enable the parties involved to choose the method of publication – through local newspapers or on a licensing authority or local authority website. Providing the option to publicise Part II and Part III licence applications on licensing authority or local authority websites, as an alternative to publishing in a local newspaper will lead to some savings for the parties concerned.

Requirements of writing: Disapplication of physical presence requirements - these provisions create the opportunity for Scottish notaries public, solicitors and advocates, while still being guided by their professional bodies, to adopt alternative appropriate means of executing documents and taking oaths etc., for example notaries may execute certain documents remotely, for example by way of live video connection. There may be potential for savings to legal professionals in relation to associated travel costs as a result of the provisions removing the requirement for “physical presence”, though 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. The provisions simply provide the option and flexibility to those legal professionals who do wish to offer delivery of such services in this manner.

There may be potential for savings to individuals and organisations in relation to associated travel costs as a result of the provisions removing the requirement for “physical presence”, though such savings are expected to be minimal.

Registration of births and Registration of deaths - the option of registering the birth of a child or registering a death through remote means could save travel time and reduce inconvenience. For registration of births, this option may also save time generally at what is likely to be a busy period just after the birth of a child.

Land registration - putting the functions of the Keeper onto a permanent footing reflecting the clear preference of stakeholders, with almost universal support for the retention of digital submissions by Registers of Scotland (“RoS”) customers. As well as providing resilience in the event of any future public health disruption, the measures provide a safer, faster and more reliable way of transmitting applications with environmental benefits in the form of significantly reduced paper use and also saving the Scottish Administration £300,000 annually as a result of reduced postal costs.

Care services: giving of notices by SCSWIS - enabling the Care Inspectorate to continue to provide notices electronically modernises the way in which the Care Inspectorate is permitted to give formal notices and bring its practices into line with other similar regulators in the UK. There are benefits in having the ability and choice to issue notices either by personal delivery, post, or electronic means, depending on the circumstance.

Tenancies

The provisions will encourage sustainment of tenancies during the recovery from the pandemic. The Bill will ensure that, prior to seeking repossession of a property on the grounds of rent arrears, landlords make reasonable efforts to work with tenants to manage arrears. The Bill will also ensure that, for all eviction cases, the Tribunal will be able to consider all relevant circumstances before determining whether an eviction is reasonable.

Temporary Justice Measures

The Recover, Renew, Transform programme for the justice system aims to recover essential services and transform how the system operates to ensure a resilient, effective justice system now and for the future.

Some of the measures in the Bill contribute to the Scottish Government’s March 2021 Digital strategy: “A changing nation: how Scotland will thrive in a digital world”⁸, which commits to the transformation of key public services, providing environmental benefits due to reduced printing and paper usage and unnecessary travel, for

⁸ [A changing nation: how Scotland will thrive in a digital world - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/a-changing-nation/how-scotland-will-thrive-in-a-digital-world/pages/100-to-109.aspx)

example enabling court or tribunal documents to be signed and transmitted electronically.

The use of these temporary measures has enabled swift process changes that have allowed court and tribunal services to operate more efficiently. In response to the consultation, the FoA said “In this digital age it makes sense for documents to be signed electronically and transmitted by email. It is difficult to see what circumstances would require actual signing and physical delivery.” Similarly, the law firm CMS LLP commented that, “the ability to deal with civil court business on the basis of electronic documents has been a very welcome development, not only as regards dealing with the limitations imposed by the pandemic but also as regards civil court business more generally. It has had the effect of streamlining court procedures, has assisted in reducing unnecessary delays and inefficiencies, and has, overall, improved communication between the courts and court users. Moreover, while we recognise there are exceptions, this approach better reflects how the majority of businesses and individuals manage their own documentation.” The Lord President has previously stated the use of written submissions, the digital transmission of documents and the use of electronic signatures have enabled swift process changes which are necessary to operate court services efficiently.

The temporary measures to provide for virtual attendance at court have enabled the justice sector to respond to the challenges of the pandemic and to deliver improvements which are seen as also features of a modern criminal justice system. These provisions are a key measure to provide for the continued operation of courts and tribunals as a result of the Covid pandemic, to allow both civil and criminal proceedings to be conducted in a way which minimises unnecessary travel and congregation of people, and saves time for those involved in critical front line service delivery.

The temporary time limit provisions ensure that Crown Office and Procurator Fiscal Service, court and defence resources are not diverted from progressing criminal trials to consider large numbers of applications to extend time limits on a case-by-case basis.

Costs

Costs that may be incurred by businesses or other bodies are set out in detail in the Financial Memorandum which is available from the Scottish Parliament website and is linked to from [this Bill webpage](#). For some provisions, including Modifications of the Public Health etc. (Scotland) Act 2008 and Educational establishments etc., costs will not arise unless the regulation making powers that the Bill provides for require to be used.

Public Health Protection

Modifications of the Public Health etc. (Scotland) Act 2008 – There are no costs associated with the enabling powers themselves. Costs could be anticipated if the regulation making powers were to be used in relation to a public health response to the incidence or spread of infection or contamination in Scotland requiring some degree of national coordination. Such costs would be associated with any

regulations made under the provisions, and these would be analysed as part of the regulation making process.

Education

Educational establishments etc. – Likewise, costs would be anticipated if regulation making powers were used in relation to educational establishments, in the event of action required to protect public health. Costs could be incurred for educational establishments (independent schools sector, private, third and childminding childcare sector and the further and higher education institutions) if regulations needed to be introduced. The nature and scale of those costs and impacts would be dependent on the nature and circumstances of the public health emergency being faced at that time.

There may also be an impact on suppliers who service these institutions (such as contracted cleaning, catering, security etc. services) as well as local businesses.

Again, such costs would be associated with any regulations made under the provisions, and these would be analysed as part of the regulation making process.

Public Service Reform

Bankruptcy – the provision to increase the debt level that enables creditors to pursue the bankruptcy of a debtor through the courts will result in no additional direct costs or savings to public sector organisations, other bodies, individuals and businesses. Although these organisations will be unable to seek to make their debtors bankrupt for debts of less than £5,000, the provision does not extinguish the debt or prevent other means of recovery. The reduction in administration costs in bankruptcy proceedings through the facility for electronic service of documents and virtual meetings of creditors may deliver an increase in the funds ultimately available to creditors.

Requirements of writing: Disapplication of physical presence requirements – there is potential for minimal costs to regulatory bodies. These are expected to be limited to minimal administrative costs (borne by their existing operational funds). There may be some costs associated with the set-up of technical equipment for legal professionals, so that they can make use of the remote arrangements such as video link, cameras etc. However, this cost is optional as implementing this policy would only be an option, not a requirement.

Tenancies

While it is possible that making all eviction grounds discretionary could lead to a limited increase in costs for landlords in certain situations, for example if eviction proceedings relating to grounds which were previously mandatory take longer due to the First Tier Tribunal (Housing and Property Chamber) (“the Tribunal”) considering whether eviction is reasonable in the circumstances, it is unlikely to create a substantial increase in overall costs to landlords. There is also a possible increase in demand on money advice services and housing support agencies, to support tenants and landlords. When a private sector landlord is seeking to repossess a property

where the tenant is causing damage, there could be additional repair costs to bring the property up to standard; however, these costs could still occur regardless of the Tribunal's ability to consider whether eviction is reasonable.

It is possible that making all eviction grounds discretionary will lead to some costs increasing for landlords. As an example, eviction proceedings could potentially take longer due to the Tribunal considering whether eviction is reasonable in the circumstances. The change to making all eviction grounds discretionary is unlikely to create a substantial change in costs to landlords. There is also a possible increase in demand on money advice services and housing support agencies, to support tenants and landlords. When a private sector landlord is seeking to repossess a property where the tenant is causing damage, there could be additional repair costs to bring the property up to standard, however these costs could still occur regardless of the Tribunal's ability to consider whether eviction is reasonable.

Temporary Justice Measures

There are no anticipated extra costs or regulatory impact on business flowing from these proposals as they provide legislative authority for operational and administrative solutions planned and implemented already by the responsible agencies. They allow for business continuity and short/medium term resilience planning. In some cases, there will be efficiencies identified as well as ongoing running costs, for example by Police Scotland.

Prisons and young offenders institutions – the additional costs for supporting individuals released earlier into the community should be considered in the context of the reduced costs to the SPS to support them in custody. Such additional costs would be incurred by local authority housing services who would 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. Further, a high proportion of 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. As a result, it is likely that any cohort of prisoners that are released early will produce a cost to benefits.

Scottish Firms Impact Test

Public Health Protection

Modifications of the Public Health etc. (Scotland) Act 2008 – These provisions are enabling powers and will have no immediate effect on business.

In relation to Arrangements for vaccination and immunisation, the provisions do not directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete, limit suppliers' incentives to compete vigorously, or limit the choices and information available to consumers as GP contracts remain open to all suppliers who are qualified GPs and will provide Essential Services. The Vaccination Transformation Programme could lead to some Health Boards providing travel vaccinations which are currently supplied on the private market by medical

practitioners. However, Health Boards and GP practices already do this in some areas of Scotland.

Education

The provisions for *Educational establishments etc.* are also enabling powers and will have no immediate effect on business. Some information about the scale of the independent schools and childcare sectors and cost impacts are set out below.

Independent Schools - the independent school sector in Scotland comprises 90 schools⁹ registered with the Office of the Registrar of Independent Schools. Independent schools range in size and provision with some having very low numbers of pupils (<25) and others with large pupil rolls (c2000). Some are day schools and others include boarding provision. Many independent schools are situated in Edinburgh, but there are others in the other major Scottish cities (Glasgow, Dundee and Aberdeen) and some in rural areas. If regulations were to be used for independent schools, then there would be a direct impact on these schools, which could impact on a range of costs including reduced income through loss of fee income or lets, and potential increased running costs, depending on the nature of any future public health emergency.

Childcare Sector - The childcare sector has a mixture of providers across the public, private and third sectors. There are around 1,800 registered childcare services in the private and third sector. Most of the businesses operating in the regulated childcare sector are small or medium sized. There are also some larger businesses who operate a number of regulated childcare services across the country. The sector also includes around 4,060 childminders who are self-employed.

The Scottish Social Services Council Report on 2020 Workforce Data reports that at the end of 2020¹⁰ there were 38,300 people employed in day care of children services in Scotland (excludes childminders). This comprises of 19,280 employed in local authority services; 13,270 in private sector services, and 5,750 in voluntary/not for profit services.

If regulations were issued to regulated childcare services - day care of children services and childminding services - in the event of a future pandemic, then any public health guidance for the sector that followed could result in additional costs for the private sector, third sector and childminding services in the childcare sector. Restrictions on regulated childcare services could have direct impacts on these providers through reductions in capacity and income generation, and potential additional operating costs. Further targeted interventions on regulated childcare services would also be expected to impact on businesses in other sectors if they lead to reducing workers' ability to access childcare.

It is expected, as experienced during the Covid pandemic, that these impacts on childcare services would be in addition to the general impacts (in particular reduced demand and income) that they faced as a result of any future pandemic.

⁹ [Independent schools in Scotland: register - gov.scot \(www.gov.scot\)](http://www.gov.scot)

¹⁰ [Scottish Social Service Sector: Report on 2020 Workforce Data \(sssc.uk.com\)](http://sssc.uk.com)

Public Service Reform

Bankruptcy – Scottish firms are unlikely to see significant impact arising from the increase in debt level that enables creditors to pursue the bankruptcy of a debtor through the courts. Efficiency savings in bankruptcy proceedings may also provide for an increase in funds available to creditors.

Requirements of writing: Disapplication of physical presence requirements – the LSS, on behalf of its members, is supportive of the provisions becoming permanent. It is anticipated the provisions will be of benefit to legal and non-legal firms, as the provisions will allow greater access, convenience, and flexibility to those who may require such legal services, which includes businesses.

Land registration – Ten solicitors' firms of varying sizes provided responses to the public consultation which demonstrated clear and unambiguous support for retention of the digital submission service for applications to the property register which were initially introduced in response to the pandemic. As these measures facilitate the remote interaction with the Keeper's registers through digital registration and transmission, no negative impact on international trade and investment is envisaged.

Legal aid and advice: Claim for interim payment of fees and outlays – the LSS, which negotiates with the Government on behalf of its members, is supportive of the provisions albeit pending further reform of the legal aid system. It is anticipated the provisions will be of benefit to legal aid providers across Scotland by allowing early fees to be accessed ahead of completion of a case, therefore assisting with cash flow.

Tenancies

The Scottish Government have held discussions with a number of key stakeholders during the pandemic to seek feedback on the proposed protocol to understand the impact, benefits or difficulties each option could present to PRS landlords in Scotland.

Temporary Justice Measures

There are no costs or savings or regulatory impact on business or consumers.

Competition Assessment

Public Health Protection

The provisions have no effect on competition and so no competition assessment is required.

Education

Educational establishments etc. – Independent schools operate in a competitive market in competition with other independent schools and the state sector. During the pandemic they faced financial pressures as a result of closure of premises, as

the provision they offered had to change. This prompted many independent schools to innovate and switch quickly to providing high quality remote learning. Stakeholders have reported that independent schools in Scotland have seen an increase in pupil numbers with a 3% increase in boarding provision, 2% in secondary and 1.5% overall across the sector. This implies that the independent schools sectors' approach to providing education and possible concerns about educational loss in the state sector during the pandemic has attracted more parents to choose the independent sector.

The Scottish Government's expectation is that in a future public health emergency independent schools would face similar pressures and there may be circumstances where the use of the regulation making powers would be necessary, but this is not expected to result in any particular types of independent schools gaining a competitive advantage.

Childcare sector - The sector operates as a mixed economy model with childcare providers in the public, private, third and childminding sectors. The evidence collected through the Financial Sustainability Health Check¹¹, and previously in the survey of childcare providers undertaken in June 2020, indicated that there were variations in the impacts – on costs, capacity, and income – of the Covid pandemic and the resulting guidance which varied across services. This reflected differences across providers in the sector regarding the physical layout of buildings, relative ease of access to outdoor space, service delivery models, and staffing models.

Public Service Reform

Bankruptcy – the increase in minimum debt level a creditor must be owed to petition the court for the bankruptcy of a debtor will have no effect on the choices or information available to consumers. The provision is, however, likely to have a positive impact in that it affords some additional protection and opportunity to seek advice and solutions for problem debt at levels below £5,000, without the threat of bankruptcy proceedings and the consequences arising from it.

Requirements of writing: Disapplication of physical presence requirements – it is not anticipated the proposals will negatively impact on competition. However, in terms of consumer choice, legal firms who chose not to offer such legal services remotely may be placed at a slight disadvantage against those who do. The provisions do not directly or indirectly limit the number or range of suppliers. They do not limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

Land registration – strong support for these measures was evident amongst a wide variety of business users with almost universal support for the retention of digital submissions by the conveyancing community as evidenced by the responses to the targeted consultation.

Legal aid and advice: Claim for interim payment of fees and outlays – the provisions do not directly or indirectly limit the number or range of suppliers. They do not limit

¹¹ [Financial sustainability health check of the childcare sector in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-petitions/html/2020/financial-sustainability-health-check-of-the-childcare-sector-in-scotland/)

the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

Tenancies

The introduction of a permanent pre-action protocol and making all eviction grounds discretionary will affect all private landlords but it is not expected that the changes will distort competition in the affected markets. The wider policy intention of the protocol is to support sustainable tenancies in the private rented sector. The provisions will provide clarity for landlords on the actions they are expected to take when seeking repossession in cases of rent arrears and set a level playing field for all landlords in the management of such cases. In terms of making all eviction grounds discretionary, this will lead to all relevant factors for both the tenant and the landlord being taken into account, before a decision is made.

Temporary Justice Measures

The provisions do not give rise to any immediate or direct impact on Scottish firms or competition.

Consumer Assessment

Education

Educational establishments etc. – In the event that access to educational establishments was restricted or prohibited, pupils/student experience of how they access education would change considerably as it would entail a switch to remote learning or, in the case of the children of key workers and vulnerable children, being taught in different ways such as childcare hubs which may feel disruptive.

As impacts on consumers would vary dependent on the particular terms of any regulations issued, and how this affected which services were able to operate (if any), which children were eligible to receive childcare (for example, under previous restrictions services were provided for vulnerable children and children from key worker families), and the delivery models that services operate.

Charging practices by childcare services in the private, third and childminding sector under periods where regulations are issued would be a consideration. Whilst charging practices are for individual businesses, under previous periods of restrictions they have been encouraged to be reasonable in their dealings with families in relation to ongoing fees and retainers for services not currently being accessed. Providers were only able to take this approach due to Reserved financial support schemes established by the UK Government that sought to safeguard their basic financial interests.

In the further and higher education sectors, there would be impacts on the learning experience of student consumers (including Scottish domiciled undergraduate students whose fees are met by the Scottish Government) if the powers under the Bill required to be used.

Public Service Reform

Legal aid and advice: Claim for interim payment of fees and outlays – it is in the interests of the consumer that a varied and competitive legal aid sector exists to ensure quality of choice in accessing legal advice.

Land registration – the digital submission systems are open to solicitors and conveyancing professionals, who make up the vast majority of RoS' customer base. This service has been warmly received by RoS customers, with an overwhelming majority of those responding to the targeted consultation in support of the service being retained on a permanent basis. The support for the service was equally positive amongst businesses and citizen respondents. No feedback from the consultation activity suggested any negative impact on the quality, availability or price of services.

Registration of births and Registration of deaths – the option of registering the birth of a child or registering a death through remote means could save travel time and reduce inconvenience. For registration of births, this option may also save time generally at what is likely to be a busy period just after the birth of a child.

Tenancies

The price and availability of properties to rent could be affected but any such impact is expected to be small. The proposed measures are intended to provide additional protection for tenants, while still finding the right balance between the rights of both landlords and tenants.

Temporary Justice Measures

The provisions do 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. In relation to forms which are already in place:

- Legal aid and advice: Claim for interim payment of fees and outlays - SLAB administer the Scottish Legal Aid Fund online. Similar provisions have been in place on a temporary basis since June 2020. There have been no issues for legal aid providers or SLAB in respect of these payments and no new forms are required.
- Requirements of writing: Disapplication of physical presence requirements – no new forms are required. Regardless of whether there is in person or remote provision of legal services, a legal professional must verify the identity of a client seeking such legal services in accordance with anti-money laundering legislation and the professionals' regulatory requirements. Legal professionals, guided by their professional body, may require to keep a record

of the process for verifying a client's identity when this is done through remote means.

- Land registration - these provisions will simply result in the digital submission service continuing to operate as it does presently on a temporary basis.

Digital Impact Test

Generally, the Bill provisions support digital ways of working by changing pre-pandemic legislation that required paper or in-person ways of working.

Public Service Reform

Bankruptcy - the measures to facilitate virtual meetings of creditors and the electronic delivery of documents have been introduced to modernise bankruptcy proceedings so that they can more effectively benefit from technology and electronic means of communication.

Care Services: giving of notices by SCSWIS - allowing the Care Inspectorate to continue to provide notices electronically will help to ensure a more effective method of delivery for care services. Issuing notices electronically provides an opportunity to modernise the way in which the Care Inspectorate is permitted to give formal notices and bring its practices into line with other similar regulators in the UK.

Requirements of writing: Disapplication of physical presence requirements – the provisions are not anticipated to have any negative digital impacts on a specific group as they do not remove the option for the legal services identified to be accessed in person. The provisions may have positive digital impacts in terms of allowing greater access, convenience, and flexibility to persons who may find it difficult to travel, such as some disabled persons or persons with health issues and generally those who may prefer to access such legal services remotely.

Registration of birth and Registration of deaths - longer term, National Records of Scotland (“NRS”), working with local authorities, will consider if digital birth and death registration could be introduced. This could involve the informant completing an on-line form to directly register the birth or death, with the registrar checking the information provided. However, this would require investment in IT and changes in working practices and changes for informants too. Moving to a digital system of this nature to register births and deaths is some years away.

Land registration - these provisions will ensure the Keeper remains able to operate the current digital submission service. This service has been warmly received by RoS customers, with 98% of responses to the targeted consultation in support of the service being retained on a permanent basis. During its introduction and, as part of ongoing service delivery, the Keeper will continue to engage with the service's user base to ensure customer's needs are considered. The measures work on a presumption of digital submission but with exceptions for instances where physical deeds remain necessary, for example where a citizen wishes to deal with their own conveyancing or where an applicant has no access to a computer.

Custody at police stations: Custody officers' functions - where necessary, prisoner custody officers will be fully trained and supported by both police and court staff in situations that require them to engage with virtual court technology.

Tenancies

The introduction of a pre-action protocol and making all eviction grounds discretionary will not materially change the processes for landlords seeking a repossession order. Digital change in terms of processes are not anticipated, but should any occur, then they will do so in the context of the wider processes. These measures do not place any specific actions on landlords in terms of how they should engage with tenants or the Tribunal.

Temporary Justice Measures

No digital impact test is required - the provisions for digital signature and transmission of court and tribunal documents and for online publication of certain court documents will only be applicable in a digital context. However, for businesses that do not use digital communication, alternative non-digital options are available

Legal Aid Impact Test

None of the provisions in the Bill have been identified as having an impact on the legal aid fund.

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

Tenancies

The provisions are not expected to have a significant impact on the Fund, given the relatively small number of cases and that they will not create a new procedure or right of appeal to a court or tribunal.

Temporary Justice Measures

These provisions do not give rise to an immediate impact on the Fund.

Enforcement, Sanctions and Monitoring

Public Health Protection

The proposed provisions contain a power to confer functions on bodies such as local authorities and health boards to monitor public health risks. Its aim is to ensure that risks to public health are kept under observation to maximise the chances that threats can be detected at an early stage.

Education

Educational establishments etc. – experience of the Covid pandemic has shown that effective monitoring arrangements were established via the Covid Education Recovery Group and via direct engagement between Scottish Government and stakeholder bodies. We expect that similar processes would be utilised in a future situation though the nature of the public health emergency would determine what monitoring processes would be used. If those subject to the regulations did not comply with their requirements, legal action would be taken using the relevant legislative measures.

Public Service Reform

Bankruptcy - enforcement of the increased debt threshold for creditor petition will ultimately be for the Scottish Courts. For example, a creditor petition to the Sheriff Court for bankruptcy of a debtor would not be accepted where the debt levels are below the increased threshold level.

Alcohol/Civic licensing - the day to day administration of the alcohol and civic government licensing systems in Scotland rests with the independent Licensing Authorities and local authorities who already have compliance and monitoring systems in place for the administration of the licensing regimes.

Legal aid and advice: Claim for interim payment of fees and outlays - SLAB has a continuing programme of research and analysis relating to both the supply of and access legal aid, and factors which may affect such supply and access.

Requirements of writing: Disapplication of physical presence requirements - solicitors, notaries and advocates will be guided by their professional and regulatory bodies who will monitor the use of the provisions. The Scottish Legal Complaints Commission acts as a single gateway for all complaints against legal professionals in Scotland. It investigates and resolves complaints about inadequate professional service, refers complaints about the conduct of lawyers to the relevant professional organisation and has oversight of complaint handling across the profession. Serious disciplinary issues relating to the conduct of legal professionals may also be heard before their Discipline Tribunal, via the relevant professional regulatory body.

Registration of births and Registration of deaths - NRS will discuss configuration of birth and death registration services with local authorities. Local authorities may then seek to establish remote birth and death registration services, with some aspects of these subject to approval by the Registrar General at NRS. There are no specific

enforcement and sanctions in respect of remote registration of births and deaths. However, there is an obligation on informants to register births within 21 days and to register deaths within eight days of occurrence. NRS will monitor the take up and success of remote registration of births and deaths through regular meetings with local authority registrars and registration managers.

Tenancies

The Tribunal will take compliance with the pre-action protocol into account when deciding whether it is reasonable to grant a repossession order for rent arrears cases and, making eviction grounds discretionary, will allow the Tribunal to consider all relevant facts prior to making a decision. The impact of these proposed measures on the outcome of applications for repossession will be monitored through the publically reported decisions of the Tribunal.

Temporary Justice Measures

These proposals are temporary, in the sense that the measures will expire unless the Scottish Parliament agrees to extend the application of the provisions each year. The expiry date for these provisions in the Bill is initially stated to be 30 November 2023. They can only be extended by Parliament until 30 November 2025 at the latest.

The Scottish Government will continue to request from the SCTS regular updates about the use of these provisions to provide evidence to Parliament explaining why there is a continuing need (or otherwise) for this measure to remain in force.

In relation to the provisions relating to Prisons and young offenders institutions, under the May 2020 early release process, 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 provisions of main body of the Bill have for the most part been in operation since March or April 2020 and the aim is for them to continue on a permanent basis from September 2022. The temporary justice measures have been in operation since April 2020 and the aim is to continue their use on a longer extension basis so long as they are required as part of the Justice Recovery programme. Provisions within the Bill that are new will be implemented after September 2022.

Post-implementation Review

The Scottish Government will continue its regular engagement with key stakeholders, including key licensing stakeholders (representatives of Scottish Local Authority Lawyers and Administrators, licensing sub-committee, the LSS licensing sub-committee and experts in licensing law as well as Licensed Trade representative bodies).

In relation to the temporary justice measures, the Scottish Government will continue to engage with stakeholders in order to review the operation of these provisions. Reviews will begin in the course of 2023 to consider whether provisions should be extended beyond the first expiry date of 30 November 2023.

Summary and Recommendation

The Bill, announced in the Programme for Government 2021-22, follows a full 12-week public consultation that took place between 17 August and 9 November 2021. The Bill will embed reforms in Scotland's public services and justice system that, though necessitated by the Covid pandemic, have delivered improvements for service users and improved efficiency.

The impacts, including costs, of this Bill on business and regulatory bodies are minimal as set out above. The provisions in the Bill for Modifications of the Public Health etc. (Scotland) Act 2008 and Educational establishments etc. contain only enabling powers and so the provisions themselves have no immediate impact on sectors and groups. In the event of a future health threat, any regulations made using these powers would require to be accompanied by a BRIA, and it would be at that point that the impacts would be measured and set out.



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