

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

## **Statement of Reasons**

# PROPOSED EXTENSION OF THE CORONAVIRUS (SCOTLAND) ACT 2020 AND THE CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020

## STATEMENT OF REASONS

### 1. Introduction

- 1.1 The Scottish Government is committed to putting, and keeping, in place all necessary measures to continue to address the on-going coronavirus pandemic.
- 1.2 The Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 introduced measures deemed to be essential at the time of the coronavirus outbreak in Scotland in 2020. The Acts are required to respond to the set of specific circumstances resulting from the pandemic and are therefore time limited. The Acts are due to expire on 31 March 2021.
- 1.3 In addition to being time limited, the Government has also made clear it will retain and use the provisions in the Acts only for as long as they are necessary. As a result, where it has been possible to do so, provisions in the Acts have been suspended or expired when they have either fulfilled their purpose or the Scottish Government has listened to compelling views supporting change.
- 1.4 This Statement of Reasons sets out why the Scottish Government believes it is necessary and appropriate to extend Part 1 of both Acts beyond 31 March to 30 September 2021. While details on specific measures are contained in [section 6](#), a summary of all the Government's recommendations is set out in [section 7](#).

### 2. Background to proposal

- 2.1 The Coronavirus (Scotland) Act 2020<sup>1</sup> (the 'first Scottish Act') came into force on 7 April 2020 (except for one provision) and the Coronavirus (Scotland) (No.2) Act 2020<sup>2</sup> (the 'second Scottish Act') came into force on 27 May 2020. The Acts have provided powers and measures which have helped to protect the public, maintain essential public services and support the economy in the face of the unprecedented and ongoing public health and economic challenges created by the pandemic. This includes protections for individuals in areas such as housing, measures to support the ongoing operation of the justice system, and support for public bodies in their response to coronavirus (COVID-19) such as adjustments to deadlines for reports and accounts.
- 2.2 As set out under section 12 of the first Scottish Act, and section 9 of the second Scottish Act, Part 1 of both Acts were due to expire on 30 September 2020. On 29 September 2020, the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020<sup>3</sup> (SSI 2020/299) came into force extending the expiry date of Part 1 of both Acts to 31 March 2021. On the same day, the

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<sup>1</sup> [Coronavirus \(Scotland\) Act 2020](#)

<sup>2</sup> [Coronavirus \(Scotland\) \(No.2\) Act 2020](#)

<sup>3</sup> [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2020](#)

Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020<sup>4</sup> came into force expiring provisions of those Acts which were no longer required beyond 29 September 2020.

- 2.3 Section 12(3)(b) of the first Act and section 9(3)(b) of the second Act allow for a further extension of Part 1 of these Acts for a further six months to 30 September 2021 through regulations with the agreement of Parliament.
- 2.4 On 11 February 2021, the Cabinet Secretary for the Constitution, Europe and External Affairs advised Parliament that the Scottish Ministers were conducting analysis to determine whether the Acts should be extended beyond 31 March 2021 since, regrettably, the pandemic is not yet over. The Cabinet Secretary further made clear that, if supported by the evidence, regulations would be brought forward seeking the Scottish Parliament's agreement to extend the expiry dates of the Scottish Coronavirus Acts to 30 September 2021.
- 2.5 Having concluded that analysis, the Scottish Government intends to lay draft regulations for the Parliament to consider which would seek to extend the expiry date of Part 1 of both Scottish Coronavirus Acts from 31 March 2021 to 30 September 2021. As required by section 12(6) of the first Scottish Act and section 9(6) of the second Scottish Act, this Statement of Reasons has been prepared by the Scottish Government to set out reasons why the draft Coronavirus (Scotland) Acts (Amendment of Expiry Date) Regulations 2021 (the 'further extension regulations') should be made. This Statement of Reasons is laid ahead of the draft extension regulations as required by section 12(6) of the first Scottish Act and section 9(6) of the second Scottish Act.
- 2.6 At the time the Scottish Government laid the 'Coronavirus Acts: first report to Scottish Parliament'<sup>5</sup>, it had recently published, on 21 May 2020: 'Coronavirus (COVID-19): Scotland's route map through and out of the crisis'<sup>6</sup> (the 'route map'). On 23 October 2020, the Scottish Government brought into effect 'COVID-19: Scotland's Strategic Framework'. This Framework set out five levels of protection that can be applied nationally or to different areas of the country according to evolving patterns of infection and transmission. Since the Scottish Government laid the 'Coronavirus Acts: fourth report to Scottish Parliament'<sup>7</sup> on 9 December 2020, and as a result of the new, more transmissible variant of the virus being identified in the UK in December, firm, preventative action was taken designed to reduce the risk of it spreading any further in Scotland. This action included applying tightened level 4 measures to all of mainland Scotland from 5 January 2021. The island areas were kept under review and level 4 restrictions were applied to the Isle of Barra and the Isle of Vatersay from 20 January 2020<sup>8</sup>, while Na h-Eileanan Siar also moved

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<sup>4</sup> [The Coronavirus \(Scotland\) Acts \(Early Expiry of Provisions\) Regulations 2020](#)

<sup>5</sup> [Coronavirus Acts: first report to Scottish Parliament](#)

<sup>6</sup> [Coronavirus \(COVID-19\): Scotland's route map through and out of the crisis](#)

<sup>7</sup> [Coronavirus Acts: fourth report to Scottish Parliament](#)

<sup>8</sup> [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 13\) Regulations 2021](#)

to level 4 from 30 January 2021 due to an increase in prevalence of coronavirus and an increase in infection rates<sup>9</sup>.

- 2.7 It is in this context that Scottish Ministers have given consideration to the question of whether Part 1 of the Scottish Acts should be extended. In doing so, careful consideration has been given to the requirement to balance the needs of many stakeholders and partners who wish to see the provisions remain available, against the commitment given when the Acts were introduced, that the powers would not remain in place unless necessary. As the coronavirus pandemic is not yet over, and as measures in the Scottish Acts continue to be an important part of the Scottish Government's response to the continuing and significant public health risk and economic challenges posed by the pandemic, the assessment that Ministers have arrived at in proposing to extend the Acts is proportionate and appropriate to the scale of that risk.
- 2.8 Part 1 of each of the Scottish Acts can only be extended in their entirety and not on a provision by provision basis. This is done through regulations with the agreement of the Parliament. Any provisions that should not be extended therefore need to be expired through separate regulations. The Scottish Government has taken the decision that, subject to the agreement of Parliament, Part 1 of both Acts should be extended, to 31 March 2021. Following the laying of this Statement of Reasons, the Scottish Government will lay draft regulations to amend the expiry dates of both Acts accordingly. However, this extension will not apply to all provisions in the Acts which are currently in place.
- 2.9 The Scottish Government has been clear that the provisions contained within the Scottish Acts must only be in place for as long as it is necessary and therefore in the preparations for the potential extension of the Acts, consideration has been given to whether each individual provision continues to be needed beyond 31 March 2021. It has been judged that seven measures will no longer be needed and can be expired. Therefore, alongside the further extension regulations, the Scottish Government is also laying a separate set of regulations, the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021 ("the early expiry and suspension regulations").
- 2.10 The early expiry and suspension regulations will expire the seven identified provisions on 30 March 2021 and so these provisions would not be covered by an extension to Part 1 of both Acts.
- 2.11 The early expiry and suspension regulations will also provide for marriage and civil partnership provision in the second Scottish Act to be suspended from 30 March 2021. This will ensure that the duties in this provision could be revived at a future point if required as a result of changing circumstances.

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<sup>9</sup> [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 15\) Regulations 2021](#)

- 2.12 Information on the provisions to be expired or suspended, and the reasons for their inclusion in the early expiry and suspension regulations, is provided within the Policy Note for those regulations.
- 2.13 The reporting requirement under section 15 of the first Scottish Act and section 12 of the second Scottish Act will continue to require reporting whilst provisions in Part 1 of each of the Acts are in force. The reporting periods under the legislation end on 31 March 2021, 31 May 2021, 31 July 2021 and 30 September 2021. It is also important to note that, throughout the proposed six month extension period, if provisions are deemed to be no longer necessary during that time, they can be suspended or expired early. A suspended provision could subsequently be revived if this was considered necessary. So proposing that Part 1 of both Acts be extended at this time does not mean that all provisions covered by the extension will remain in place until 30 September 2021. As it has done throughout the life of the Acts so far, the Scottish Government will keep the continued necessity of these provisions under review.
- 2.14 This Statement of Reasons provides further detail of the considerations that have been made in arriving at the recommended list of provisions which are proposed to be covered by the extension regulations to be laid before the Parliament to extend the expiry date of Part 1 of each of the Scottish Acts.

### **3. Rights and equality considerations**

- 3.1 The Scottish Government has acknowledged in its two-monthly reporting on the Scottish Acts that some provisions have more significant impacts on rights and equality than others. As part of the assessment of continued necessity of the provisions beyond 31 March 2021, an assessment of the rights and equality impacts of extension has been undertaken.
- 3.2 Equality Impact Assessments (EQIA) and Child Rights and Wellbeing Impact Assessments (CRWIA) were undertaken for both of the Scottish Acts as part of the development of the Bills which were introduced to Parliament on 31 March and 11 May 2020, respectively. The human rights impacts were summarised in the Policy Memorandums for each of the Acts. For some provisions, there have been no significant changes since this time and no additional rights or equality impacts are expected in the proposed extension of the provisions. Further information has been provided, where relevant and/or helpful, later in this Statement.
- 3.3 In setting out the proposals for the extension of the provisions under both Scottish Acts which are covered in this Statement, consideration was given to continued compliance with the European Convention on Human Rights ("ECHR") and other relevant rights.

### **4. Consultation**

- 4.1 A formal public consultation exercise on the proposal for the extension regulations has not been undertaken due to the timescales in which decisions on extension and relevant preparations had to be made. However, as part of

the ongoing review of the continued necessity of the provisions and the formal process required under the Scottish Acts to report to Parliament every two months on the operation and status of provisions, there has been ongoing stakeholder engagement and consultation on whether the provisions continue to be necessary. The reporting regime will continue should the extension regulations be approved.

- 4.2 There are also examples which are covered later in this Statement, which detail the stakeholder engagement that has been undertaken to arrive at the proposals for extension, including for the provisions relating to student accommodation, vulnerable adults, the temporary extension of the moratorium on diligence and bankruptcy and the duration of planning permission.

## 5. Proportionality

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

## 6. Provisions proposed for extension

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

### Eviction from dwelling-houses

- 6.1.1 From 26 December 2020, the Government applied level 4 measures to all of the mainland and tightened those on 5 January 2021. It remains uncertain how the virus may develop and what future action might be required as a result.
- 6.1.2 Therefore, extending these provisions will continue to provide renters with additional protection from eviction during the longer term impact of the pandemic. This will help to provide certainty for tenants, including those who have become unemployed during the pandemic, or will become unemployed as the furlough scheme ends, who are concerned about paying their rent by ensuring that they have time to apply for, and benefit from, the interventions available to support them to pay their bills before a landlord can take eviction action.
- 6.1.3 The Scottish Government has considered the implications of not extending the eviction from dwelling houses provisions. However, this would mean that tenants who may only now be experiencing the negative effects of the pandemic, or who are made redundant following the end of the furlough scheme, would not benefit from the additional time provided under the extended notice periods to apply for, and receive, the available support in the

short term. It would also mean that they would not benefit from the additional time provided under the extended notice periods to plan for the longer term, if necessary, as Scotland recovers from this unprecedented crisis.

- 6.1.4 In addition, the First-tier Tribunal for Scotland (Housing and Property Chamber) would no longer have discretion to take into account the full circumstances of the case including the impact of the pandemic, when determining private rented sector evictions cases where the ground for eviction was rent arrears.
- 6.1.5 In January 2021, additional temporary legislation<sup>10</sup> was put in place to ban the enforcement of eviction orders across the private and social rented sectors (except in cases relating to antisocial or criminal behaviour), in areas subject to level 3 or 4 restrictions, until 31 March 2021. An extension to the ban on the enforcement of eviction orders, beyond 31 March, is currently being considered.
- 6.1.6 The Scottish Government is in regular contact with those representing tenants, landlords and letting agents in both the private and social rented sectors, local authorities and the Scottish Housing Regulator. The Scottish Government has engaged with these stakeholders proactively to respond to the needs of tenants and landlords during the period of the coronavirus pandemic through three specific resilience groups (Social Rented Sector, Private Rented Sector and Local Authority) established in response to the outbreak. Informal consultation on the impact of the current provisions has been undertaken as part of this engagement.
- 6.1.7 The Scottish Government has assessed the potential impact of extending the eviction provisions on equal opportunities and has determined the continuing operation of these provisions does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership) either directly or indirectly. The Scottish Government has assessed the impact of these measures on island communities, local government and sustainable development and has not identified any detrimental impacts of extending the provisions.
- 6.1.8 The Scottish Government has assessed the potential impact of an extension of the provisions on human rights. Particular consideration has been given to the impact of the provisions on a landlord's property rights under Article 1, Protocol 1 of the ECHR. The Scottish Government considers that the continuing operation of these provisions would not infringe the Article 1, Protocol 1 rights of landlords but the operation of these provisions will be kept under review to ensure that it remains proportionate.

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<sup>10</sup> [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 12\) Regulations 2021](#)

- 6.1.9 The Scottish Government's view is that the temporary provisions continue to strike an appropriate balance between the landlord's rights in the property and the right of the tenant to be protected during the public health coronavirus pandemic. A fair balance has been struck by ensuring that the measures are temporary and opting for a limited extension to three months' notice in certain appropriate grounds. The maximum period of notice that the landlord will have to provide will be six months and the provisions will not affect notices which have already been issued under existing notice periods. In addition, the emergency provisions include a power to vary the length of the extended notice periods. This provides Scottish Ministers with the flexibility to respond to the uncertainty around the duration of the impact of the pandemic. These varying powers provide the necessary mechanism to maintain an appropriate balance between the rights of tenants and landlords thereby ensuring continuing respect for the Article 1 Protocol 1 rights of both parties.
- 6.1.10 Over recent years the private rented sector has seen an increasing number of families calling it home. Based on the latest published Scottish Household Survey (SHS) data, there are an estimated 70,000 family households out of 340,000 in the private rented sector in Scotland, with 5% of private rented households being single parent families, 12% being small families and 3% being large families.
- 6.1.11 In the social rented sector there are 150,000 family households out of 580,000. The SHS data shows that 11% of social rented households were single parent families, 9% were small families and 5% were large families.
- 6.1.12 Many of these family households will be significantly impacted by the current coronavirus crisis, therefore the provisions being taken forward to protect renters from eviction during this time are highly likely to have a positive impact on both children and young people residing within these rented family homes.
- 6.1.13 Should these legislative measures not be extended, families with children may face an increased risk of being evicted from their rented properties and therefore significantly increase the chances of households becoming homeless. Therefore not extending this temporary legislative action is likely to have a detrimental impact on children's and young people's rights.
- 6.1.14 This policy is purely concerned with implementing temporary measures to help protect tenants from eviction during the coronavirus crisis. This is in recognition of the significant impact it continues to have on a large number of tenants' financial circumstances. It is not intended to impact, directly or indirectly, on any group of people with protected characteristics, or on the wider equality duties. However, women are the majority of renters in the social rented sector. People from non-white backgrounds are more likely than people from white backgrounds to live in the private rented sector. Women and people with disabilities are more likely to rely on social security as part or all of their income, and to live on low incomes. Women are more likely to have caring responsibilities and therefore be impacted more significantly – socially and financially - by the consequences of the outbreak. Action to protect people who



rent from eviction during the outbreak should have a positive impact on outcomes for these groups.

- 6.1.15 The Scottish Government considers that extending these temporary legislative changes is likely to positively impact across those with protected characteristics, as the provisions are designed to guard against the public health risks which would arise from increased evictions during the pandemic; and protect individuals from the financial impacts of the pandemic.

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

- 6.1.16 The extension of the pre-action requirements provisions will continue to encourage sustainment of tenancies during the coronavirus pandemic by ensuring that, prior to seeking repossession of a property on the grounds of rent arrears, landlords make reasonable efforts to work with tenants to manage arrears.
- 6.1.17 This measure complements the action taken to protect tenants from eviction action in the first Scottish Act and formalises the steps landlords should take when seeking to work with tenants to manage arrears, helping to sustain tenancies and prevent homelessness.
- 6.1.18 The Scottish Government is in regular contact with those representing tenants, landlords, letting agents and local authorities. Officials have engaged with these stakeholders proactively to respond to the needs of tenants and landlords during the period of the coronavirus outbreak including through the Private Rented Sector Resilience Group, which was established in response to the outbreak. Informal consultation on the impact of the current provisions has been undertaken.
- 6.1.19 The Scottish Government considered the implications of not extending this provision, however, extension is necessary to help support the sustainment of tenancies during the pandemic, where rent arrears are an issue.
- 6.1.20 The introduction of pre-action requirements is an important measure in supporting tenants in the private rented sector, who are in rent arrears for a reason related to the pandemic, to sustain their tenancies, reducing the likelihood of eviction and subsequent homelessness. Housing, health and other public services continue to be under acute and ongoing pressure, and this pressure would only get worse should there be an increase in evictions, placing people at risk.
- 6.1.21 The Scottish Government has assessed the potential impact of these provisions on human rights, children's rights and equality and considers that the introduction of pre-action requirements will have a positive impact across those with protected characteristics. The Scottish Government also considers that these measures support the right to adequate housing under the International Covenant on Economic, Social and Cultural Rights by ensuring appropriate safeguards are in place to prevent unnecessary eviction. Although, the

provision is a control on landlords' property and engages Article 1 Protocol 1 of ECHR, the Scottish Government is satisfied that the interference, which informs the Tribunal's decision as to whether an eviction for rent arrears is reasonable, continues to be proportionate.

- 6.1.22 Evidence suggest that tenants in the private rented sector are experiencing financial difficulty due to the pandemic and finding themselves unable to meet their obligations under their tenancy agreement. Under normal, pre-coronavirus housing legislation, tenants would be at greater risk of having their home repossessed by their landlord at a time when housing, health and other public services are under acute and ongoing pressure.
- 6.1.23 As outlined above, over recent years the private rented sector has seen an increasing number of families calling it home. Many of these family households will be significantly impacted by coronavirus, therefore the provisions being extended give tenants greater protection from eviction during this time, and are highly likely to have a positive impact on both children and young people residing within these rented family homes.
- 6.1.24 Similar to the provisions relating to eviction from dwelling houses, extending these provisions are likely to positively impact across those with protected characteristics, as the legislative measures provide additional protection from being evicted during the longer-term impacts of the pandemic.

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

- 6.2.1 The provisions in relation to tenancies for students in halls of residence and Purpose Built Student Accommodation (PBSA) provide that:
- Students who have entered into a student residential tenancy before 27 May 2020 and have occupied the property, can give seven days' notice to their accommodation provider.
  - Students who have already entered into a student residential tenancy before 27 May 2020 but have not yet occupied the property, can give 28 days' notice to their accommodation provider.
  - Students who enter into a student residential tenancy after 27 May 2020 can give 28 days' notice to their accommodation provider.
- 6.2.2 At this period in the academic year, most students, therefore, can utilise the 28 day notice period. Students can only terminate tenancies for a reason relating to coronavirus if seeking to terminate their lease under the terms of the Act. Students may wish to terminate leases for other reasons.
- 6.2.3 From 26 December 2020, the Government applied level 4 measures to all of the mainland and tightened those on 5 January. The Coronavirus (COVID-19): universities, colleges and student accommodation providers guidance therefore applies<sup>11</sup>. This means that there are increased restrictions in response to the

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<sup>11</sup> [Coronavirus \(COVID-19\): universities, colleges and student accommodation providers](#)

new, more transmissible variant of the Coronavirus. Students must stay at home and any university education that can be done online must be done online.

- 6.2.4 The Coronavirus (COVID-19): universities, colleges and student accommodation providers guidance is regularly reviewed and aligns with the five protection levels. The guidance sets out a three phase staggered return to campus but this is subject to ongoing advice from the Scientific Advisory Group for Emergencies (SAGE) and Public Health Scotland (PHS) and the dates of these stages have still to be confirmed. However, given current circumstances it is not expected that there will be a full return by 31 March.
- 6.2.5 The Coronavirus Acts: Fourth Report to Scottish Parliament<sup>12</sup> (covering the period to 30 November 2020) set out the take up of the provisions. A survey of providers, undertaken by the Student Accommodation Group, found that over 6,500 notices to leave have been lodged with providers who responded to the survey since the Act came into force on 27 May 2020. 70% of respondents advised this was much higher than last year.
- 6.2.6 Not to extend the provisions of the Act in relation to notice to leave periods, given the position outlined above regarding the virus and the timetable for return to campus, would introduce uncertainty for student renters in halls of residence and PBSA.
- 6.2.7 An extension of the notice to leave provisions in relation to student renters in halls of residence and PBSA to the end of September would ensure that they remain aligned with those students residing in the mainstream Private Rented Sector.
- 6.2.8 Equality Impact Assessments and Child Rights and Wellbeing Impact Assessments were undertaken for both of the Scottish Acts as part of the development of the Bills which were introduced to Parliament on 31 March and 11 May 2020, respectively. The human rights impacts were summarised in the Policy Memorandums for each of the Acts. For the provisions set out in relation to student tenancies in halls and PBSA, there have been no significant changes since this time and no additional rights or equality impacts are expected in the proposed extension of the provisions.

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

**First Scottish Act, section 3 and schedule 2 - Temporary extension of moratoriums on diligence**

- 6.3.1 The extension of the existing moratorium on diligence and bankruptcy from six weeks to six months prevents creditors from taking action against individuals who have financial difficulties. This is to allow those individuals time to find

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<sup>12</sup> [Coronavirus Acts: fourth report to Scottish Parliament](#)

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.

- 6.3.2 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 we see a reduction in creditor forbearance, each of which have assisted in keeping the levels of personal insolvency low during the period of the pandemic.
- 6.3.3 The Financial Conduct Authority published a report on the unsecured credit market following research led by Christopher Woolard, CBE. This report highlights that the demand for debt advice in the UK is likely to be more than double as a consequence of the pandemic, with an estimated 1.5 million additional people in need of some form of debt advice.<sup>13</sup> The report also highlights that appropriate debt advice capacity and debt solutions must be available. Stepchange Debt Charity forecast that 2.5 million people in the UK are facing financial crisis due to the pandemic and the charity is seeing 3,000 more people month on month seeking help.<sup>14</sup> It has called for the strengthening of protections against debt enforcement activity.
- 6.3.4 The extension of the moratorium period allows those with debt appropriate time to recover from these time-limited income shocks which will be more frequent given the current economic climate. The protection will enable more people to recover fully having sought advice on the available solutions and allow time to improve their own financial circumstances following an income or employment shock.
- 6.3.5 Scottish Ministers have engaged with stakeholders through a working group on Statutory Debt Solutions. This includes a broad range of stakeholders including representatives from the debt advice sector, insolvency profession and key creditor groups including UK Finance. At a meeting hosted in October 2020 the group welcomed the measures introduced by the Scottish Acts and indicated the importance of utilising the final extension through to 30 September 2021.<sup>15</sup> As a follow on to the Ministerial Working Group meeting, a series of stakeholder meetings were hosted in November 2020 to discuss immediate priorities and in particular provisions that could be placed on a permanent footing through Regulations.<sup>16</sup>
- 6.3.6 The Scottish Government also hopes that this extension will help relieve some pressure on the debt advice sector by providing extra time for debtors who need it to put in place a debt solution. It is predicted that personal insolvencies will increase in the coming months and anything that can be done to help the

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<sup>13</sup> [The Woolard Review - A review of change and innovation in the unsecured credit market](#) (page 7)

<sup>14</sup> [StepChange: Covid-19 Client Report Dec 2020](#)

<sup>15</sup> [Ministerial Stakeholder Meeting Scottish Statutory Debt Solutions - Minutes - October 2020 | Accountant in Bankruptcy](#)

<sup>16</sup> [General review of Scotland's debt solutions - Stakeholder meetings](#)

debt advice sector deal with this predicted increase is welcomed by these stakeholders.

### **Second Scottish Act**

- 6.3.7 The measures in the second Scottish Act are largely aimed at protecting those in unsustainable debt by making bankruptcy more accessible. They do this by lowering fees (to zero in most cases), increasing thresholds for the “lighter touch” form of bankruptcy, increasing the minimum amount someone must owe before a creditor can take action, and allowing more electronic and virtual administration (for example, removing the need for wet signatures).

#### **Schedule 1, Part 5, paragraph 8 - Electronic service of documents**

- 6.3.8 This measure is aimed at ensuring the bankruptcy process is fit to react to the logistical and operational challenges created by the pandemic and associated restrictions. Many people could be forced to self-isolate, for example, and may not be able to serve documents through the post.
- 6.3.9 The provisions make modifications to section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 as that section applies to documents which are authorised or required to be sent by or under the Bankruptcy (Scotland) Act 2016 with the effect that documents may be transmitted electronically. The changes allow electronic service in a way the recipient has indicated a willingness to receive this. This applies to a wide range of documents including the service of petitions.
- 6.3.10 This helps streamline the bankruptcy process and ensures it is efficient and flexible enough to function in the current climate. The length of time of continuing restrictions is, at this stage, unknown and this measure helps deal with this uncertainty and helps secure the ongoing functioning of the bankruptcy system.
- 6.3.11 At the Stakeholder Meeting on the 26 October 2020 discussed in paragraph 6.3.5, a cross-sector group representing insolvency practitioners, advice agencies and other stakeholders welcomed the current emergency COVID-19 provisions relating to bankruptcy, including the electronic service of documents. The group believed it was important to utilise the final extension of these reforms through to September 2021. This demonstrates that this provision is having a positive effect on the sector during the current crisis.

#### **The draft Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 (“the bankruptcy regulations”)**

- 6.3.12 These Regulations<sup>17</sup> were laid in draft before the Scottish Parliament on 28 January 2021. These draft Regulations include provision equivalent to paragraphs 9, 11, 13 and 14 of schedule 1 of the second Scottish Act relating to bankruptcy. If these draft Regulations are approved then paragraphs 9, 11,

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<sup>17</sup> [The Bankruptcy \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021](#)

13 and 14 will be early expired from 29 March 2021. If the draft Regulations are not approved then these paragraphs will continue in force and will be extended by the further extension regulations, should these be approved.

### **Schedule 1, part 5, Paragraph 9 - Financial criteria for Minimal Asset Process (MAP) bankruptcy**

- 6.3.13 This makes provision in relation to the criteria for determining whether a debtor who applies for sequestration under section 2 of the Bankruptcy (Scotland) Act 2016 is eligible for the form of sequestration known as the Minimal Asset Process (“MAP”). Paragraph 9(2) increases the debt threshold for entering a MAP bankruptcy from £17,000 to £25,000 and removes student loan fees from the debt threshold calculation in accessing MAP.
- 6.3.14 Citizens Advice Scotland’s research has shown that almost two in five people in Scotland are concerned about their income during the COVID-19 pandemic.<sup>18</sup> The debt advice charity Stepchange has estimated that 2.87 million people affected by coronavirus are now at high risk of long-term debt problems.<sup>19</sup> Many charities are predicting that the UK is facing a debt crisis in the coming months as government business support schemes are wound down and creditor forbearance reaches its end point. Almost inevitably this will result in large numbers of debtors being made bankrupt in Scotland.
- 6.3.15 It is against this backdrop that the extension of this provision is sought. The provision ensures a larger number of debtors qualify for a quicker and easier form of bankruptcy. Increasing access to MAP will ensure the system is ready and nimble enough to react to this predicted increase in demand. Additionally, it ensures the most financially vulnerable debtors have the opportunity to access the appropriate solution.
- 6.3.16 As noted in paragraph 6.3.5, the Scottish Government has held a series of stakeholder meetings relating to these provisions. Broad cross-sector consensus was reached on the benefit of these provisions and the need for these provisions to be extended, and, if possible, made permanent.<sup>20</sup> Details of the draft bankruptcy regulations making equivalent provision on a permanent basis are set out in paragraph 6.3.12 The stakeholder support for the adoption of this measure within bankruptcy legislation demonstrates the case for extension should the bankruptcy regulations not be approved.

### **Schedule 1, Part 5, Paragraph 10 - Meaning of qualified creditor**

- 6.3.17 This provision modifies the definitions of “qualified creditor” and “qualified creditors” in section 7(1) of the Bankruptcy (Scotland) Act 2016 by raising the minimum amount of debt a creditor must be owed before they can petition for bankruptcy from £3,000 to £10,000. This limits the amount of creditors who can petition for bankruptcy. This is seen as necessary to ensure that more people

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<sup>18</sup> [Citizens Advice: Almost 2 in 5 people worried about income as concerns about bills rise](#)

<sup>19</sup> [StepChange: Covid-19 client data report Dec 2020](#)

<sup>20</sup> [Ministerial Stakeholder Meeting Scottish Statutory Debt Solutions - Minutes - October 2020 | Accountant in Bankruptcy](#)

who have found themselves with unsustainable debt, particularly through an income or employment shock, are given sufficient time to seek advice and access the appropriate solutions. The ongoing restrictions and employment uncertainty are having an impact on people's livelihoods. This measure relieves many from the threat of bankruptcy and allows them time to recover.

- 6.3.18 The Minister for Business, Fair Work and Skills convenes a Working Group on Statutory Debt Solutions. This comprises representatives from all those with an involvement in this area, including creditors who are most likely to be impacted by the extension of the increased debt threshold for court petitions. At the meeting in October 2020, all of the members of this group recognised the need for the measures introduced by the two Scottish Acts and supported continuation of the provisions through to 30 September 2021 where possible.<sup>21</sup> As already highlighted in paragraph 6.3.14, Stepchange Debt Charity has predicted that in the UK 2.87 million people affected by coronavirus are now at high risk of long term debt problems and they have called for regulators to extend and strengthen protections against collections activity.<sup>22</sup>
- 6.3.19 Additionally, this provision will reduce the number of bankruptcy cases needing processed. Although bankruptcy numbers remain low it is predicted this will not remain the case in the coming months and this measure will help mitigate the pressure on the bankruptcy system.

#### **Schedule 1, Part 5, Paragraph 11 - Deadline for sending proposals for debtor's contribution**

- 6.3.20 This provision extends the period for a debt adviser to submit a debtor's contribution order proposal to the Accountant in Bankruptcy ("AiB") from 6 weeks to 12 weeks.
- 6.3.21 As previously noted, the Woolard Review referenced in paragraph 6.3.3 identified that around 1.5 million additional people may need some form of debt advice as a result of the pandemic. The Money and Pensions Service expects the demand for debt advice to increase by up to 60% by the end of 2021.<sup>23</sup> This highlights that the advice and insolvency profession are likely to be under significant pressure in the coming months.
- 6.3.22 It is against this backdrop that extension of this provision is necessary. It is hoped that this tool will help relieve some pressure on the insolvency profession by providing extra time for them to submit this proposal.
- 6.3.23 As already stated in paragraph 6.3.5, the Scottish Government has held a series of stakeholder meetings relating to these provisions. Broad cross-sector consensus was reached on the benefit of these provisions and the need for these provisions to be extended, and, if possible, made permanent. This period

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<sup>21</sup> [Ministerial Stakeholder Meeting Scottish Statutory Debt Solutions - Minutes - October 2020 | Accountant in Bankruptcy](#)

<sup>22</sup> [StepChange: Tackling the coronavirus personal debt crisis](#) (page 1)

<sup>23</sup> [The Money and Pensions Service: Extra £38 million for debt support in England in the wake of coronavirus](#)

of time within which debtor contribution order proposals are submitted to AiB was also included in a consultation on the 2015 reforms that introduced this requirement. This exercise highlighted that the 6 week period was not sufficient, with 12 weeks being the preferred option in the responses received.<sup>24</sup> Details of the draft bankruptcy regulations making equivalent provision on a permanent basis are set out in paragraph 6.3.12. The stakeholder support for the permanent adoption of this measure demonstrates the case for extension beyond 31 March 2021 should the bankruptcy regulations not be approved.

### **Schedule 1, Part 5, Paragraph 12 - Virtual meetings of creditors**

- 6.3.24 Paragraph 12 modifies paragraph 13 of schedule 6 of the Bankruptcy (Scotland) Act 2016 to allow meetings of creditors to take place using electronic means. Given the ongoing restrictions resulting from the pandemic, extension of this measure is necessary. In person contact is impractical on public health grounds. This measure is aimed at ensuring the bankruptcy process is able to provide solutions to these logistical problems. This helps streamline the bankruptcy process and ensures it is flexible enough to function in the current climate. This measure will improve efficiency in the bankruptcy process where restrictions that impinge on physical meetings are likely to be in place for some time to come. This has been highlighted as a modernising change that would be sensible to adopt on a permanent footing.
- 6.3.25 Given stakeholder views and the benefits of this provision, particularly while in person contact is impractical on health grounds, there is a strong rationale for extending this provision beyond 31 March 2021.

### **Schedule 1, Part 5, Paragraph 13 - Electronic signature of forms**

- 6.3.26 As with virtual meetings of creditors, given the ongoing restrictions on in person contact, extension of this measure is necessary. It is impractical for many to meet face to face and get a wet signature on forms. This measure is aimed at ensuring the bankruptcy process is fit to react to these challenges by allowing the forms set out in schedule 1 of the Bankruptcy (Scotland) Regulations 2016 (S.S.I. 2016/397)<sup>25</sup> to be signed with an electronic signature.
- 6.3.27 This helps streamline the bankruptcy process and ensures it is flexible enough to function in the current climate. The length of time of COVID-19 restrictions is unknown and this measure helps deal with this uncertainty and secures the functioning of the bankruptcy system. Although this provision is sensible as a response to the COVID-19 pandemic where interaction between advisers and clients is limited, it has also been recognised as a sensible modernising change that fits well to the changing nature of advice provision and the channels through which this is delivered.
- 6.3.28 As a result of the series of stakeholder meetings previously mentioned, which concluded that there was benefit in extending bankruptcy provisions, including

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<sup>24</sup> [AiB - Policy Development - Bankruptcy and Debt Advice Review - Summary of the consultation responses report](#)

<sup>25</sup> [The Bankruptcy \(Scotland\) Regulations 2016](#)



this one, and making them permanent, if possible, this provision is included in the bankruptcy regulations discussed at paragraph 6.3.12. The stakeholder support for the adoption of this measure within bankruptcy legislation demonstrates the case for extension should the bankruptcy regulations not be approved.

#### **Schedule 1, Part 5, Paragraph 14 - Fees for debtor applications**

- 6.3.29 This provision provides lower cost access to both the Full Administration and Minimal Asset Process routes to bankruptcy, with complete removal of fees for those in receipt of certain prescribed benefits.
- 6.3.30 Extension of this provision is necessary to deal with the continuing economic crisis. Household finances are coming under sustained pressure and it is necessary to encourage individuals to deal with problem debt. The recent Woolard report by the FCA emphasised that increase in demand for debt solutions is imminent. They recommended that the UK Government and devolved administrations ensure that suitable debt solutions are available to best serve people in financial difficulties and that barriers should be reduced to people accessing suitable debt solutions. In particular, they included fees as one of the measures to be looked at. They underlined that “it is unfair when the very poorest are asked to provide £90 for a Debt Relief Order [“DRO”] application”.<sup>26</sup> A DRO is similar to the Minimal Asset Process bankruptcy in Scotland. This shows that it is both right and necessary for this provision relating to fees to be extended.
- 6.3.31 This extension is needed to remove perceived barriers to bankruptcy and to make the bankruptcy solutions as accessible as possible.
- 6.3.32 As a result of the series of stakeholder meetings previously mentioned, which concluded that there was benefit in extending bankruptcy provisions, including this one, and making them permanent, if possible, this provision is included in the draft bankruptcy regulations discussed at paragraph 6.3.12. The stakeholder support for the adoption of these fee reforms within bankruptcy legislation demonstrates the case for extension beyond March 2021 should the regulations making them permanent not be approved for any reason.
- 6.3.33 As indicated above, Scottish Ministers have engaged closely with stakeholders with an interest in debt and the solutions in Scotland. This has included advice agencies and many representatives from creditor organisations. All have recognised the need for the measures introduced through the Scottish Acts and support the further extension.
- 6.3.34 As there is no new information available since the passage of the Acts on rights and equality impacts related to these provisions, no new assessment of rights or equality implications has been undertaken for the provisions additional to those developed for the two Coronavirus Scotland Bills. However, those assessments remain valid for the extension of the provisions in terms of human

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<sup>26</sup> [The Woolard Review - A review of change and innovation in the unsecured credit market](#) (page 7)

rights impacts, in that it remains that interference with creditors' property rights is justified by protection of debtors, and there is a fair balance between the interests of debtors and creditors.

#### **6.4 First Scottish Act: section 4 and schedule 3 - Children and vulnerable adults – Part 1, paragraphs 1-5, and 7-10**

##### **Part 1, paragraph 1 - Relaxation of requirement for children's hearing to consist of three children's panel members and relaxation of requirement to have a gender mix among panel members on each children's hearing**

- 6.4.1 The provisions provide for relaxation of requirement for children's hearing to consist of three children's panel members and relaxation of requirement to have a gender mix among panel members on each children's hearing. It is the Scottish Government's view that there is a requirement to extend this provision as, if, as a result of coronavirus, there are not enough panel members of a particular gender to enable a hearing to include male and female members, urgent hearings may have to be delayed or rescheduled which could leave children vulnerable. Moreover, as a result of illness, self-isolation or caring responsibilities, there may not be enough panel members available to form hearings of three panel members to conduct essential and urgent children's hearings required to make decisions to protect children.
- 6.4.2 The National Convener of Children's Hearings Scotland continues to permit the planned use of these provisions where it is known in advance that it would not be possible to rota a 3-member, mixed gender panel to a particular hearing. Using these provisions is deemed preferable to delaying hearings for children, when insufficient panel members are available to form a 3-member mixed-gender hearing in the normal way. Use of these provisions remains, however, a last resort when all other possibilities have been exhausted. The provision should therefore be extended beyond March 2021 given current restrictions and their impact on recovery capacity.
- 6.4.3 Rights and equality implications were fully considered during the development of the provisions as part of the original Bill development process and a further CRWIA<sup>27</sup> specifically considering the children's provisions was also developed. This has been updated to reflect the analysis that has taken place in considering whether to extend the individual children's provisions. Summaries of this consideration are reflected in this section of the Statement (section 6.4) in relation to each of the children's provisions.
- 6.4.4 Consideration has been given to the rights impact in relation to this specific provision, and using the emergency legislation when all other possibilities have been exhausted, is deemed preferable to delaying hearings for children, when insufficient panel members are available.

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<sup>27</sup> [CRWIA: Coronavirus \(Scotland\) Act 2020 - Children's provisions](#)

### **Part 1, paragraph 2(3) to (7) - No requirement for a second working day hearing to be held following the issuing of a Child Protection Order**

- 6.4.5 This provides that there is no requirement for a second working day hearing to be held following the issuing of a Child Protection Order (“CPO”). It is the Scottish Government’s view that there is a requirement to extend this provision since, although the numbers of CPO applications are small, reintroducing second working day hearings would impact on the capacity of social workers, panel members and education staff, in addition to children and families. Hearing capacity is overstretched at present and, as the situation at the end of March is unknown, the continued safety of this provision is needed.
- 6.4.6 Consideration has been given to the rights impact of these specific provisions which recognise and support emergency intervention to prevent significant risk of harm, or in response to significant harm. Whilst the requirement to hold a second working day children’s hearing is suspended, the opportunity to challenge the emergency intervention of the CPO through an application to recall or vary the CPO at the Sheriff Court is extended to last until the 8<sup>th</sup> working day children’s hearing, meaning that the potential infringement on the rights of children and families is mitigated.

### **Part 1, paragraph 3 - Maximum period for which a Compulsory Supervision Order has effect**

- 6.4.7 This provides that if a hearing has not taken place to review a Compulsory Supervision Order (“CSO”) before it expires, the order will not expire, unless six months have passed since the expiry date or the child has attained the age of 18 years. It is the Scottish Government’s view that this provision should be extended since, given the adverse impact of current restrictions on children’s hearings recovery planning, this is an essential provision. The aim over time remains to reduce reliance on this provision although the system’s use of this provision means it currently remains necessary.
- 6.4.8 This provision has only been used to the extent necessary driven by the practicalities of holding children’s hearings in the current context, and the extent of use will vary as the safety and operational contexts develop. Due to the severe restriction in the number of children’s hearings which could be held as a result of the current pandemic, this provision has had the effect of extending a number of orders. This provision has a particular impact in that its use moves the expiry review children’s hearing by 6 months, which has meant that since the end of September 2020 the Scottish Children’s Reporter Administration (“the SCRA”) has been managing both the extension of orders and the review of orders already extended. To return to normal operations will require the continuation of this specific provision for perhaps longer than other provisions.
- 6.4.9 The SCRA has been unable to operate at anywhere near normal capacity as a result of movement restrictions, social distancing and virus prevention measures. Working in concert with families and system partners, SCRA has been increasing the number of hearings as restriction measures were reducing, in line with the multi-agency children’s hearings recovery plan published in

November 2020. This has been by arranging face to face hearings, sometimes with some participants attending remotely ('hybrid hearings'), but also by continuing to maintain the number of virtual hearings.

- 6.4.10 Reporters are reviewing the use of this provision on a case by case basis, and taking into consideration whether there would likely be a risk of detriment to the child's welfare if the CSO was not varied or terminated before the original expiry date. The Principal Reporter has applied a prioritisation framework to enable the timely consideration of individual cases and is closely monitoring the situation with a view to arranging such hearings as soon as practicable. SCRA continues to make active decisions about the need to extend any existing CSO following dialogue with social workers and families and if families indicated they would want to have their hearing it has been arranged wherever possible.
- 6.4.11 A multi-agency recovery plan was developed by the weekly Children's Hearings COVID Recovery Group in autumn 2020, then agreed and published by the national strategic Children's Hearings Improvement Partnership in November 2020<sup>28</sup>. The plan models review of all CSOs where the use of the emergency legislation will gradually be reduced and will cease to be used. The progress of this recovery plan has been materially affected by the additional movement restrictions and other virus suppression measures introduced in Scotland since 26 December 2020. This provision in the first Scottish Act allows an expiry review of a CSO to take place up to six months after the original expiry date. The use of this six month period was intended to be reduced incrementally as the SCRA increases its capacity, and its ability to arrange expiry review hearings becomes more practicable. This will be impacted by the restrictions currently in place. In order to recover, SCRA will need to arrange the expiry reviews within a given month alongside those reviews where the end date of extant orders have been extended by virtue of the legislation. This means that the operating capacity of the hearings system has to increase beyond the capacity it offered at the beginning of March 2020 prior to the pandemic.
- 6.4.12 Consideration has been given to the rights impact in relation to this provision which releases capacity in the system for cases which require to be heard to come to the children's hearing. The impact of the pandemic continues to limit capacity in the system and this is one of a range of measures which builds capacity in the system to recover in line with prioritised case management.
- 6.4.13 This provision does however impact on the right to have a child's statutory intervention (CSO) reviewed within the legislated 12 month timescale. This provision does extend the compulsory state intervention in the life of a child and family (the Compulsory Supervision Order) by a period of up to 6 months. This impacts on child and family rights as set out in statute. It is the legislated right to review after 12 months which is impacted, therefore the child's and family's right to request a review at any time is not affected in any way.
- 6.4.14 Any cases where a review of the situation of the child is required in order to make a change to, or terminate, the order, are being scheduled as a matter of

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<sup>28</sup> [Children's Hearings Improvement Partnership Recovery Plan 2020-2021](#)

priority. Therefore it is those cases where no change is required and where no-one is in disagreement with the extension of the CSO for up to 6 months which are being impacted.

- 6.4.15 Children's cases are considered individually in relation to the application of this provision. The views of children and relevant people are taken into account directly or indirectly. Where there is a need to have a hearing to make a change (which can include termination of an order) and where people request a hearing, the hearings are being arranged. The right of a child or relevant person to request a review is untouched and this can happen at any time and this is being clearly communicated to families.

**Part 1, paragraph 4 - Maximum period for which an Interim Compulsory Supervision Order or Interim Variation of a Compulsory Supervision Order has effect**

- 6.4.16 This provision amends the maximum period for which an Interim Compulsory Supervision Order ("ICSO") or Interim Variation of a Compulsory Supervision Order ("IVCSO") has effect. It is the Scottish Government's view that there is a need to extend this provision as it is still required to allow more flexibility for agencies seeking to respond in a prioritised way to the challenges posed by the coronavirus pandemic. The provision amends sections 86(3) and 140(4) of the Children's Hearings (Scotland) Act 2011 to provide that the maximum period for which an ICSO or an IVCSO has effect is:

- where the order is made by a children's hearing, 44 days, or
- where the order is made by a sheriff, such other period as the sheriff may specify.

- 6.4.17 As with the existing legislation, a hearing may make an ICSO or interim variation for a shorter period than the maximum period. These provisions are still required not just because of the reduced capacity of hearings but for the impact on both families and the Scottish Courts and Tribunal Service.

- 6.4.18 Consideration has been given to the rights impact in relation to each of the individual provisions. This provision releases capacity in the system for cases which require to be heard to come to the children's hearing. The impact of the pandemic continues to limit capacity in the system and this is one of a range of measures which builds capacity in the system. It is also a measure which means that a child will have more time between each children's hearing.

- 6.4.19 This does impact on the right to have an ICSO or IVCSO reviewed within the legislated 22 day timescale, but the provision does not have to be used and is not used in every case. The use of the provision is considered by each children's hearing. The right of appeal has not been altered and the time limits in relation to the appeal have been extended to ensure that a child and relevant person has recourse to challenge the decision by appeal.

### **Part 1, paragraph 5 - Period within which a children's hearing must be heard in certain cases – secure care and other place of safety placements**

- 6.4.20 The provision extends the period within which a children's hearing must be held in certain cases (for example, within the seventh day following an ICSSO or to within 7 working days following the transfer of a child to a place of safety in cases of urgent necessity). It is the Scottish Government's view that there is a need to extend this provision as it is still needed to provide some flexibility given the greatly restricted capacity to hold hearings at the present time.
- 6.4.21 In circumstances where the numbers of staff available to work at any one time and the pressures on the Courts are without precedent, it remains essential to have additional time for crucial challenges to be heard and dealt with. The additional time in relation to short notice appeals within the children's hearing system gives time for children and families to obtain legal and other supports; for Reporters to prepare and circulate all the relevant documents and for the Court to make and communicate the arrangements for the case to be heard.
- 6.4.22 Consideration has been given to the rights impact in relation to each of the individual provisions. In relation to this provision this measure has given some flexibility and capacity to the system to allow this to happen in circumstances when the ability to arrange hearings at short notice have been affected. Arrangements for physical children's hearings have additional considerations and the logistics of setting up a virtual children's hearing are complex.
- 6.4.23 This does however have a negative impact as decision making is not available to children in the same timescale as it was previously. Nevertheless, the children's hearing will still happen, although not as quickly in every case as it did before. Emergency transfer hearings generally have limited information and substantive decision making requires to be done when a situation is more settled for the child and full assessment and recommendations are available. Any decision related to secure care can still be reviewed and challenged through the Secure Accommodation (Scotland) Regulations 2013<sup>29</sup>, and the requirements for implementation of the secure accommodation authorisation. That right to challenge exists outwith the children's hearings provisions and outwith the emergency provisions.

### **Part 1, paragraph 7 - Modification of certain time limits for making and determination of appeals**

- 6.4.24 It is the Scottish Government's view that this provision requires to be extended beyond 31 March 2021 as it extends the time limits for the making, disposal or determination of appeals or the making or lodging of applications. The operational context for those working within the children's hearing system continues to be subject to severe constraints. These constraints can impact on the ability to process work and to ensure that the timescales of the Children's Hearings (Scotland) Act 2011 are always met. Not meeting these timescales can result in the failure of an intervention and the requirement to start a process

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<sup>29</sup> [The Secure Accommodation \(Scotland\) Regulations 2013](#)

again. This is often not in the interest of a child and their family, it can cause confusion and can have a negative impact on the child and family's trust in both the system and the professionals and others providing them with support.

- 6.4.25 Consideration has been given to the rights impact in relation to each of the individual provisions. In relation to this provision, this gives flexibility and capacity for children and families to challenge decision making over a longer time period. Any decision to challenge is within the control of the child or family. The pandemic has made it more difficult for children and families to access legal representatives and advocacy workers. It may mean that more time is needed for the preparation of appeals and the associated paperwork to appeal a decision. This provision gives that time.
- 6.4.26 There is, however, a negative impact as the longer timescales may mean that decisions take longer to be made. Yet, it may also mean that an appeal decision is less likely to be deferred to a subsequent calling and that fewer court callings may be needed for these decisions to be made.

#### **Part 1, paragraph 8 - Dispensation with physical attendance at children's hearings**

- 6.4.27 This provision covers attendance of persons other than children or relevant persons to facilitate remote attendance of other persons and relates to rule 19 of the procedural rules to enable attendance by other means<sup>30</sup>.
- 6.4.28 The majority of the 11,925 children's hearings that have taken place over the reporting periods covered by the two-monthly reporting to Parliament on coronavirus legislation have been 'virtual children's hearings' as children, family members, professionals, reporters and the decision makers (panel members) have been unable to attend the public spaces in children's hearings centres. Since July 2020, SCRA has opened up children's hearings centres in a safe, socially distanced manner and the number of hearings where children and families have been able to attend in person markedly increased. Since 26 December 2020, SCRA is once again moving to a model more reliant on virtual children's hearings as a result of the more extensive restrictions. If a child or family require to attend in person for them to participate in their children's hearing then a physical hearing can still be arranged.
- 6.4.29 Consideration has been given to the rights impact in relation to each of the individual provisions. In relation to this provision, every children's hearing will still consider whether it can go ahead in the absence of a child and family and will assess whether they have sufficient information about the views of the child and family in relation to the decision the hearing is being asked to make.
- 6.4.30 These measures directly impact on the inclusion of children and families in the decision making of children's hearings. However, this provision is about removing the pressure on children and families to physically attend hearings.

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<sup>30</sup> [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Rules 2013](#)

The obligation to attend is removed, but the right to attend has not been affected. The existence of the provision does not prevent children and families from being involved in their hearings. It only serves to make sure that crucial time limited decisions can be made if, for any reason, a child or family member is unable to attend a children's hearing in person or through the use of technology.

- 6.4.31 SCRA have advised that since these provisions came into force anyone who wanted to attend a children's hearing has been supported and enabled to do so, as far as is possible.

**Part 1, paragraph 9 - Authentication of children's hearings documentation by electronic signature**

- 6.4.32 This provision enables authentication of documents by electronic signature and, in the Scottish Government's view, should be extended. Operational work in the children's hearing system before 23 March 2020 essentially meant that the key decision makers (panel members), the record keeper (the Reporter) and children and families were in the same place at the same time for the children's hearing. This meant that the paperwork was in hard copy. Since 23 March 2020 the operation of the hearing has become much more varied and dynamic and often means that there are no hard copy documents to sign. Consequently electronic signatures simplify and streamline administrative processes to make them more efficient and effective.
- 6.4.33 Consideration has been given to the rights impact in relation to each of the individual provisions. In relation to this provision, legal paperwork has been authenticated without any risk to anyone and without any delay. This has provided protections to children with no negative impacts.

**Part 1, paragraph 10 - Extension of the timescales for review of children's cases when they are placed in kinship care and enables Local Authorities to work with foster carers more flexibly to look after additional children when necessary**

- 6.4.34 This provision is proposed for extension to ensure that Local Authorities already using the provisions relating to foster care and the timescales for review of children's cases when they are placed in kinship care can continue and to provide flexibility should there be an increase in referrals.
- 6.4.35 Whilst not all Local Authorities have needed to use the provisions, there has been a general consensus that the additional flexibilities arising from these provisions have been needed to help allow the right decisions to be made for a child, and they are necessary to provide essential capacity and resilience within the foster care community. Due to the nature of the role, and the limits on current capacity, an outbreak (particularly in light of the risks from new variants) and surge in referrals could significantly impact on foster or kinship placements, and therefore the additional flexibility of these measures remains justified in order to keep children safe.



- 6.4.36 These provisions do not discriminate in respect of protected characteristics, human rights or island communities. The provisions should have no detrimental impact on sustainable development, and support Local Authorities to carry out their statutory duties in a time of pressure. It is the view of the Scottish Government that the preservation of these flexibilities remain justified in order to keep children safe.
- 6.4.37 Provision relating to the amendment of timescales in relation to the issuing of a Child Assessment Order (First Scottish Act, section 4 and schedule 3, Part 1, paragraph 2(2)) is not covered here as it is recommended for expiry. Information on that recommendation can be viewed in the policy note which accompanies the early expiry and suspension regulations<sup>31</sup>.

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

- 6.5.1 These provisions are currently suspended since the conditions that existed when the provisions were brought in do not exist at present. Details on the suspension of these provisions can be found in the Policy Note which accompanied the Coronavirus (Scotland) Act 2020 (Suspension: Adults with Incapacity) Regulations 2020<sup>32</sup>. However, while courts are currently dealing with guardianships as business as usual and the Office of the Public Guardian (OPG) has a full staff available at the moment, this may change. Similarly, while conditions have eased enough that doctors can currently re-certify certification to ensure adults with incapacity have proper authority for medical treatment, this may not continue to be the case as the pandemic continues if they are required to prioritise pandemic related issues. Therefore, it is the Scottish Government's view that these provisions should remain available, though suspended, beyond 31 March 2021 in case circumstances change and they should be required.
- 6.5.2 A stakeholder group consisting of representatives from Mental Welfare Commission, Royal College of Psychiatrists, Scottish Courts and Tribunals Service, Social Work Scotland, The Law Society of Scotland, The Office of the Public Guardian and The Centre for Mental Health and Capacity Law at Edinburgh Napier University has been meeting every 3 - 4 weeks since suspension of these provisions to monitor the practical situation in relation to the guardianship system and availability of doctors. In addition the group has been considering the human rights factors should the provisions be reinstated. The group has so far concluded that there is not sufficient evidence to warrant reinstatement of the provisions.
- 6.5.3 The group also considered the possible expiry of the provisions. While some members felt expiry would be appropriate as it appears unlikely the provision will have to be revived, the majority was in favour of a more cautious approach. Whilst acknowledging the efforts of those involved to adapt to new conditions, the majority felt it more appropriate that the provisions be extended and remain

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<sup>31</sup> The Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021

<sup>32</sup> [The Coronavirus \(Scotland\) Act 2020 \(Suspension: Adults with Incapacity\) Regulations 2020 - Policy Note](#)

suspended given the emergence of new strains of the virus and continued uncertainty in order that they could be revived by regulations, if required at a future point.

- 6.5.4 Both the stakeholder group and the Scottish Government will continue to regularly monitor these provisions.

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

- 6.6.1 Scotland's justice system, like jurisdictions around the world, continues to be significantly impacted by the global pandemic. The continued use of the Scottish Acts is necessary to support the current operation of the criminal justice system during this period of crisis, to ensure the viability of the 'Recover, Renew and Transform (RRT)' Programme and to enable the increased capacity across the justice system over the next year. The RRT Programme is focussed on recovering essential services and transforming how the system operates to ensure a resilient, effective justice system now and for the future.
- 6.6.2 Scottish Courts and Tribunals Service (SCTS) statistics suggested that, prior to the pandemic, an outstanding summary trials backlog of approximately 23,000 and an outstanding solemn trials backlog of approximately 1,400 was faced. Under a 'do nothing' scenario (whereby the system continues to attempt to process cases largely as it did before the crisis) recent Justice Analytical Services research suggests total trial backlogs could increase to 35,700 cases in a low impact scenario or to 62,300 cases in a high impact scenario, with additional average delays in concluding cases at summary trial of up to nearly a year, additional average delays in concluding cases at solemn trial of up to and over a year, with implications for all of the people involved with these cases (victims, witnesses, accused).
- 6.6.3 Recent management information provided by SCTS, a modelled measure of solemn indictments or summary complaints that have already been registered with the courts and which could be expected to call at trial at a future date, indicate that at the end of December, the number of "outstanding cases" was:
- High Court: Approximately 700 (pre-COVID, approx. 390)
  - Sheriff Solemn: Approximately 2,500 (pre-COVID, approx. 500)
  - Sheriff summary: Approximately 31,000 (pre-COVID, approx. 14,000)
  - JP: Approximately 5,500 (pre-COVID, approx. 3,500)
- 6.6.4 The emergency legislation has enabled the introduction and rollout of new and innovative ways of working and the Scottish Government's justice partners should be given great credit for the urgent, effective and collaborative work they have undertaken in response to the pandemic.
- 6.6.5 The Scottish Acts have underpinned progress which has been made through improved use of technology across the justice system. Much of the decision making undertaken by justice partners has been predicated on the existing powers within the emergency legislation being retained to support the initiatives

being adopted within the parameters of public health guidance. Without the provisions enabling business to be conducted by electronic means, the ability of the justice system to continue would otherwise have been adversely affected, primarily through the requirement for physical processes. Key measures enabled by use of these provisions include:

- the creation of remote jury centres for High Court and Sheriff Court trials;
- digital sharing of case information, documentation and evidence;
- the introduction of virtual trials for summary criminal cases;
- provisions enabling custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sheriffdom no matter where the alleged offence took place;
- virtual appearances from custody;
- an increase in remote hearings for both civil and criminal business.

- 6.6.6 The justice system is reliant upon these provisions to reduce pressure on physical court estate while enabling business to continue. Notwithstanding the vaccination programme being underway and reduced infection rates, the resource pressure caused by the pandemic will continue to be a significant issue for the coming months. The provisions enable business to be conducted in a way which minimises unnecessary travel and congregation of people in accordance with public health guidance and allows justice partners to focus on urgent and priority business as necessary in the physical court estate.
- 6.6.7 With restricted public access to court buildings and with public counters remaining closed, members of the public are unable to attend court buildings to view notices placed on the walls of court. Provisions relating to intimation of documents have ensured that documents can continue to be made publically available, as required or permitted by statute. The provisions have been utilised to progress a substantive volume of civil business that otherwise would have been unable to proceed, predominantly in relation to commissary business.
- 6.6.8 While there has been an increase in criminal court business there remains a significant backlog of cases, evidenced by the increase in the number of people being held on remand in Scottish prisons. The Lord President's decision in January to adjourn the majority of summary trials in the Sheriff Court and Justice of the Peace Court in response to the new variant of COVID demonstrates that very real challenges in respect of tackling the case backlog are still faced.
- 6.6.9 Provisions relating to time limits ensure that the courts will not be impacted by large numbers of individual hearings to extend time limits where competent and justice can still be progressed by avoiding proceedings being declared unlawful. Powers relating to community orders remain essential to ensure timescales for orders remain extended and powers are available to ensure the community justice system can operate effectively. Capacity to deliver unpaid work, for example, is significantly impacted by necessary public health restrictions.
- 6.6.10 Provision which increases the maximum available level of fiscal fines, thereby allowing less serious offending behaviour to be appropriately dealt with outwith

the criminal courts, will also continue to be required, particularly when summary court capacity has not yet returned to pre-pandemic levels. Such provision is important in helping with the significant backlog of court business, by freeing up courts to deal with more serious offending behaviour.

- 6.6.11 It has been essential to ensure the court has the powers to prevent the expiry of an undertaking and any conditions attached to it if a person fails to appear at court as required by the terms of their undertaking, where the court considers that the failure to appear is attributable to a reason relating to coronavirus and it is not appropriate to grant a warrant for the person's arrest. This enables the preservation of protective conditions of undertaking that may otherwise be lost where a person fails to attend court due to coronavirus and remains a key measure to preserve public and victim safety during the pandemic outbreak, particularly in sensitive cases of domestic abuse.
- 6.6.12 It is also essential that Scottish Ministers retain the powers to instruct the early release of some prisoners (which were previously used in May 2020). Although there had been some reduction in the prison population since the previous use of these powers, there continues to be a need to ensure that we retain all the current levers for managing the impact of COVID in prisons at this time.
- 6.6.13 The provisions have also allowed the Parole Board to continue to operate almost unaffected. Whilst staff and members continue to work from home it is important the parole system continues, not only to release people from prison, but to recall them when they breach their parole licence in order to keep the public safe. From 23 March 2020 to the end of January 2021, 1,074 hearings have been held by video/teleconference, with only 3 being unsuccessful.
- 6.6.14 It is vital that the progress that has been made possible by the current provisions is built upon. As part of the budget statement<sup>33</sup> the Scottish Government has committed an additional £50 million from COVID consequential to support the RRT Programme. This will be used to increase capacity across the justice system as backlogs built up while necessary public health restrictions are in place are tackled, including recruitment of additional staff, greater use of digital tools and improved support for victims and witnesses. The Criminal Justice Board meets fortnightly to oversee the programme and ensure it is implemented recognising the needs and rights of court users, and considering the whole system impacts of addressing the backlog. The continued use of the provisions is necessary to enable this vital work to progress.
- 6.6.15 The measures in the RRT Programme of work will contribute to recovering a viable justice system, respond flexibly to meet the challenges which COVID-19 presents, whilst delivering a more effective and efficient justice system. This is fundamental to protecting rights and freedoms and addressing inequality. The effective consideration of human rights, including children's rights and equalities issues is central to this work. The Scottish Government has

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<sup>33</sup> [Scottish Budget 2021-22](#)

considered the rights and equality impacts of extending the justice provisions noted below and no additional rights or equality impacts have been identified.

6.6.16 The provisions have enabled Licensing Boards and licensing authorities to continue to administer the licensing regimes under the Licensing (Scotland) Act 2005 and the Civic Government (Scotland) Act 1982 whilst staff and Members continue to work from home. The licensing regime contains a considerable number of strict timescales and deadlines with little or no discretion available to the relevant authorities if they are not adhered to. The provisions provide more flexibility for licence holders in light of the impact of the coronavirus pandemic and facilitate the holding of virtual meetings by licensing authorities to enable day to day business to continue without contributing to additional gatherings where they are not necessary. The provisions remain necessary for the proper functioning of the licensing systems, and to ensure, as far as practicable, people do not lose licenses through no fault of their own.

6.6.17 The provisions which are being proposed for extension are:

First Scottish Act - section 5 and schedule 4

- Part 1 - Courts and tribunals: conduct of business by electronic means
- Part 2 - Fiscal fines
- Part 3 - Cases beginning with an appearance from custody
- Part 4 - Extension of time limits
- Part 5 – Evidence
- Part 6 - Community orders
- Part 7 - Parole Board
- Part 8 - Release of prisoners
- Part 9 - Legal Aid

First Scottish Act

- section 6 and schedule 5 – Alcohol licensing
- section 7 and schedule 6, Part 1 – Licensing other than alcohol licensing

Second Scottish Act - section 3 and schedule 2

- Part 1 Criminal Justice - Arrangements for the custody of persons detained at police stations
- Part 1 Criminal Justice - Criminal proceedings: extension of time limits
- Part 1 Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016
- Part 1 Criminal Justice - Criminal proceedings: extension of time limits
- Part 2 – Proceeds of Crime
- Part 3 – Intimation, etc. of documents

Second Scottish Act - section 5, schedule 4 , Part 7 - Execution of documents, etc.

**6.7 First Scottish Act: section 7 and schedule 6, Part 2 – Freedom of Information (FOI), and Second Scottish Act: section 5 and schedule 4, Part 8 – Freedom of Information**

**First Scottish Act, section 7 and schedule 6, Part 2**

- 6.7.1 Section 10(1) of the Freedom of Information (Scotland) Act 2002 (“FOISA”) imposes a duty on Scottish public authorities to respond to requests for information promptly, and in any event not later than the 20<sup>th</sup> working day after receipt of the request. A similar 20 working day limit applies under section 21(1) if an authority is asked by the requester to review the initial response.
- 6.7.2 FOISA has no provision to allow an authority not to comply with these timescales in an emergency. The Scottish Information Commissioner (“the Commissioner”) has no discretion to take into account the circumstances when considering whether such an authority has complied with Part 1 of FOISA. Accordingly, if a requester appeals to the Commissioner about a failure to respond on time, the Commissioner would have no option but to find that the authority had failed to comply with Part 1 of FOISA.
- 6.7.3 This provision enables the Commissioner to have the necessary discretion to consider whether the authorities had reasonable cause for failing to comply with the timescales as a result of the coronavirus outbreak or as a result of complying with the temporarily-extended timescales contained in the first Act.
- 6.7.4 The Scottish Information Commissioner has expressed a preference for extending this provision until September 2021. The Commissioner has only received a small number of cases so far for which the Commissioner’s additional power of discretion has been relevant. However, it is likely that more will be received in the coming months.
- 6.7.5 Furthermore, it is necessary for the provision to remain in place throughout the investigation of ongoing cases, in order that the Commissioner will continue to have this power of discretion available at the point of issuing decisions on those cases.
- 6.7.6 Paragraph 7 is a technical measure enabling the Commissioner and other authorities to issue formal notices electronically. While the official advice remains that non-essential office premises should remain closed, this provision is significant in enabling the Commissioner and other authorities to discharge their statutory duties under FOISA. The Commissioner has relied on this provision to issue around 125 decisions electronically. Had the provision not been in force, it would have been necessary to re-open his office or delay the issue of these decisions until non-essential office premises are permitted to reopen.
- 6.7.7 The Scottish Government has examined the potential impact of extending these provisions and has determined that:

- they do not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly;
- no detrimental effects on human rights are anticipated;
- they will have no significantly different impact on island communities;
- they will have a small positive impact on local government, as local authorities are subject to FOISA and so will be able to rely on both provisions in discharging their duties under that Act;
- they will have no detrimental effects on sustainable development.

6.7.8 The minimal adverse impacts on children and young people identified in the CRWIA were resolved when the second Scottish Act repealed the provisions extending FOI timescales. The Scottish Government does not consider that the extension of these provisions would have any impact on children and young people. The Scottish Government has also reconsidered the equality implications set out in the EQIA. It is considered that no positive or negative impacts on any of the protected characteristics would arise as a result of extending these provisions.

#### **Second Scottish Act, schedule 4, Part 8**

6.7.9 Paragraph 12 of schedule 4 to the second Scottish Act provides that while the temporary modifications to FOISA made by the first Scottish Act are in force, the Scottish Ministers must report to the Scottish Parliament on certain aspects of their responses to requests for information under FOISA.

6.7.10 As the remaining temporary modifications to FOISA made by the first Scottish Act are proposed for extension, the Scottish Government considers that this provision should also remain in force as it appropriate to continue this reporting whilst the temporary modifications to FOISA are in place.

6.7.11 This provision in the second Scottish Act only imposes duties on the Scottish Ministers and does not affect any other person. Accordingly, the Scottish Government does not consider that it has any impact on any of the rights or equalities implications.

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

6.8.1 There are provisions in a wide range of primary and secondary legislation that require public bodies to make certain reports on their activities at particular times. There are also many provisions that require them to publish certain documents in a particular way or make them available for physical inspection, for example in council offices or libraries or by placing them at the site to which the document relates.

6.8.2 Paragraph 8 of schedule 6 allows for statutory reports to be delayed where publishing them would impede the organisation's ability to take action against coronavirus. If an authority decides to postpone the publication of a report, they

must publish a statement to that effect, and comply with the duty as soon as is reasonably practicable. Paragraph 9 allows for documents to be made available online where making them physically available risks spreading the virus or is ineffective due to restrictions in place. When there is no longer a risk of infection, the authority must either comply with the original duty or publish a statement setting out the reasons for not doing so.

- 6.8.3 The Scottish Government's intention in extending these provisions is to ensure that public authorities are able to continue to carry out their business and meet their statutory duties, while also taking action to respond to the pandemic. It will also ensure that information about the exercise of public functions and decision-making continues to be as widely available as possible, without risking the spread of infection.
- 6.8.4 These provisions will be needed to some extent until public authorities are able to return to normal operations and with offices open to the public. Since they require public authorities to make a judgement to justify each use of the powers, it is considered reasonable to keep the provisions in place as restrictions are lifted, in case of future re-imposition of restrictions nationally or locally.
- 6.8.5 The removal of requirements for certain documents to be made available for physical inspection and provision of information only online has the potential to reduce access to the information for those people who have less access to online technologies at home. However, the measure is necessary to enable local authority business and other public services to continue while offices and libraries are closed to the public to prevent spread of the virus. Without such a change, authorities and public bodies would be unable to comply with some statutory duties. It is considered that the measures are proportionate and meet a fair balance between the potential impact on the ability of individuals to participate in decision-making which may affect them, and the wider public interest. The exercise of the powers is a matter for the consideration of the authority in the circumstances. It is considered that the provisions are compatible with the ECHR.
- 6.8.6 Possible alternative approaches would include removing these provisions, thus returning to the existing statutory duties or removing the duties to publish information completely. Removing the provisions would leave many public bodies unable to comply with statutory duties and conduct their business, and removing the duties completely could mean that the public would not have the opportunity to scrutinise public bodies' business and decision-making. The Scottish Government does not consider either of these is an acceptable option.
- 6.8.7 The Scottish Government has assessed the potential impact of the proposed measure on equal opportunities and has determined it does not unlawfully directly discriminate in any way with respect to any of the protected characteristics. The Scottish Government considers there may be some impact in terms of limiting access to documents for older people and those with long-term health conditions, who use online technologies less than other groups. However, older people and those with long-term health conditions are also



identified as being at greater risk from the virus. As the aim of the policy is to allow business to continue while action is taken to reduce spread of the virus, the Scottish Government considers this to be a reasonable and appropriate temporary measure.

- 6.8.8 The Scottish Government has assessed the potential impact of the proposed measure on island communities and on sustainable development, and no detrimental effects are anticipated. On impacts on local government, this provision will relieve local authorities temporarily from a number of their duties and thereby enable them to continue their functions.

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

- 6.9.1 Paragraph 13 of schedule 6 provides that Local Authorities have the power to exclude the public from meetings if the Local Authority considers that, if members of the public are present, this would create a real or substantial risk to public health due to infection or contamination by coronavirus. Formal consultation on proposed extension of this provision has not been undertaken, however, COSLA was supportive of its introduction and its continuation.
- 6.9.2 This provision, if utilised by a Local Authority, will have an impact on the openness and transparency of Local Authority decision-making. However, it will avoid the situation where an authority may be unable to comply with statutory duties, when offices are closed. Local Authorities are expected to take reasonable measures to ensure that the public can still view meeting proceedings online and all public items considered at these meetings along with minutes will continue to be made accessible online – there has been no change to legislation in respect of that.
- 6.9.3 Paragraph 14 of schedule 6 of the first Scottish Act provides that the existing requirement for local authorities to provide hard copies or extracts of a document requested by a member of the public in their offices will no longer be a compulsory obligation upon a local authority, and allows the Local Authority to only provide such hard copies or extracts if it is reasonably practicable to do so. As offices are currently closed then it is not possible to do this.
- 6.9.4 These provisions will be needed until such time as council offices can reopen to the public, without the need for physical distancing, and/or other relevant aspects of Local Authority business resumes, as there is no practical way of physically admitting members of the public into council offices and/or meetings, as council buildings largely remain shut.
- 6.9.5 The measures do not unlawfully directly discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership).
- 6.9.6 Enabling Local Authorities to assess their local circumstances and decide whether it is appropriate to exclude the public from their committee meetings on

public health grounds associated with coronavirus could however have an impact on some particular groupings of the public. All 32 Local Authorities are currently holding their committee meetings remotely using technology and not in person. This could have a disproportionate impact on older people, people with disabilities or members of the public who don't have the infrastructure or skillset to access public meetings remotely. However, some of these groups are also identified as being at greater risk from the virus. The aim of the policy is to allow council business to continue while action is taken to reduce spread of the virus, and the Scottish Government considers this to be an appropriate measure.

- 6.9.7 The exercise of the powers is a matter for the consideration of the Local Authority in individual circumstances. The Scottish Government considers that the provisions are compatible with the ECHR.

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

- 6.10.1 This provision enables the Scottish Ministers, by regulation, to amend the statutory reporting deadlines of Scottish administration annual accounts.
- 6.10.2 The provisions allow regulations to be made modifying the Public Finance and Accountability (Scotland) Act 2000 in relation to certain accounts in certain circumstances for the financial years ending 31 March 2020 and 2021. This could include allowing the publication of annual accounts to be delayed.
- 6.10.3 The Scottish Government published its Consolidated Annual Accounts for the financial year ending 31 March 2020 in December of 2020. However, the Scottish Government is satisfied that the provisions should be extended as, in relation to the Financial year ending March 2021, they are appropriate and proportionate in the current circumstances in order to provide a mechanism to offer relief to financial year reporting deadlines dependent on the needs of the Scottish Government and public bodies. No rights or equality implications have been identified in relation to extension of this provision.

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

- 6.11.1 The extension of the provision will mean that Social Security Scotland will continue, until September 2021, to be required to complete a re-determination<sup>34</sup> of entitlement to social security assistance as soon as reasonably practicable, whilst providing the possibility of an additional 9 weeks, on top of the original 16 working days, to do so.
- 6.11.2 In considering extension, Scottish Ministers have considered the practical issues that clients and Social Security Scotland will face as this period of disruption continues. Clients' ability to gather and submit any further information

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<sup>34</sup> Section 41 of the Social Security (Scotland) Act 2018 enables an individual to ask that their entitlement be looked at again by the Scottish Ministers if they are not content with a determination by the Ministers under section 37 of that Act.

may continue to be impacted by the coronavirus outbreak and submission of further evidence may be delayed or impacted by inbound mail issues and for other reasons.

- 6.11.3 The risk remains that the ongoing impact of coronavirus will also affect the operations of Social Security Scotland, which administers social security assistance on behalf of the Scottish Ministers. As normal life continues to be disrupted by measures to suppress the virus, staff at Social Security Scotland may be dealing with further and future absence as a result of illness for some time yet, as well as the need to care for family members who are ill, the need to provide childcare, the loss of staff to other areas of work, and other disruption related to the coronavirus outbreak. It is anticipated too that there may be an increase in workload as the current lockdown comes to an end and redeterminations work load picks up.
- 6.11.4 This is expected to continue to mean that the normal timescales for redeterminations under the Social Security (Scotland) Act 2018 (“the 2018 Act”) will be unable to be met in some cases.
- 6.11.5 In recognition of that impact, and to avoid a large number of cases proceeding to appeal before the First-tier Tribunal unnecessarily, the first Scottish Act allows this longer period of time for the Scottish Ministers to carry out redeterminations. The period of extension is to be no more than is necessary to ensure the effective administration of the social security system in the circumstances, and in all cases re-determinations will be made as quickly as possible ensuring that individual rights are respected.
- 6.11.6 The Scottish Government does not expect Social Security Scotland to unnecessarily use the available additional nine weeks for every redetermination completed. Rather, this available period of possible extension reflects that impacts on operations continue to be unknown due to the continued uncertainty of the pandemic, and is intended to provide for the worst case scenario. Social Security Scotland will still be expected to deal with redeterminations as quickly as the situation allows, and as close to the usual 16 working day rule as possible in every instance.
- 6.11.7 The Scottish Government has assessed the potential impact of the proposed measure on equal opportunities and has determined it does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.
- 6.11.8 The Scottish Government has assessed the potential impact of the proposed measure on human rights. It is considered that a reasonable and justifiable balance in all the circumstances is struck here between the Article 6 right to a fair and public hearing within a reasonable time, the Article 1 Protocol 1 right to peaceful enjoyment of possessions, which include benefit entitlement, and the Article 2 right to life, by protecting capacity to deliver alongside providing re-determinations as quickly as possible.

## **6.12 First Scottish Act: section 8 and schedule 7, paragraphs 6 and 7 - Irritancy clauses in commercial leases: non-payment of rent or other sums due**

- 6.12.1 The aim of extending the provision is to protect tenants with a commercial lease over a property from eviction for non-payment of rent in a short time period. Ultimately, this will assist in keeping businesses afloat and retaining jobs to allow the economy to recover.
- 6.12.2 The provision has been generally welcomed by both landlords and tenants in the commercial property sector. It gives sufficient time for the parties to come together to reach a mutually beneficial agreement through rental deferrals, reductions, holidays and lease restructuring.
- 6.12.3 As a preventative measure it is impossible to state how many tenants may have been evicted had it not been put in place. It is considered, however, that this could have been quite a number at the outset when the duration of the pandemic was unknown. However, most landlords now appear to be of the view that evicting a tenant would not be in their interest as they would have difficulty in re-letting the property at a similar rent and in the meantime would be liable for repairs, maintenance, rates and security.
- 6.12.4 The release of the Code of practice for the commercial property sector, in June 2020<sup>35</sup>, which is applicable in Scotland, gave further weight as to how landlords, tenants and lenders were expected to behave and since then has been applied in conjunction with the Coronavirus Acts both in Scotland and across the UK. The Code does not expire until 24 June 2021 so it would not be sensible or prudent to expire the provision in the first Scottish Act in advance of then.
- 6.12.5 The measures in place in Scotland are proportionate as a tenant can still be evicted for non-payment of rent. Tenants in Scotland can also still be evicted through the summary diligence procedures.
- 6.12.6 The Scottish Government has assessed the potential impact of the proposed measure on human rights. The Act amends the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 to alter the period of notice which a landlord of a commercial lease must give to the tenant before the landlord can irritate the lease on the grounds of non-payment of rent. While the alterations to the limitations on the landlords ability to irritate a lease may potentially engage Article 1 Protocol 1 of the ECHR it is considered that this is fair and proportionate in the circumstances and any such interference with property rights is justifiable in the public interest when balanced against the impact on the individual landlord.
- 6.12.7 The Scottish Government has assessed the potential impact of the proposed measure on island communities; on local government; and on sustainable

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<sup>35</sup> [Code of practice for the commercial property sector](#)

development. No significantly different impact or detrimental effects are anticipated.

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

- 6.13.1 The Scottish Government is of the view that extending these provisions to extend the duration of planning permission will support the construction sector in its recovery from the COVID-19 restrictions, reduce the burden on authorities needing to reconsider applications and provide consistency to businesses operating across the UK.
- 6.13.2 This view has been formed following feedback being received from key stakeholders, which made clear the positive effects of the use of the provisions to date and the desirability of extending the availability of these provisions, especially in light of current tighter restrictions necessary as a result of the new strains of the virus.
- 6.13.3 Examples of feedback provided are below.

**The Scottish Property Federation (“SPF”)**

*“The SPF believes it is vitally important that the emergency provisions for extending planning permissions are continued. Without this flexibility, we fear several major development projects may fail to be delivered due to being timed out of permissions, potentially risking both the projects and the businesses investing in those projects. The real estate sector is a key catalyst for jobs, investment and creating places and the SPF is therefore firmly of the view that extending this provision in the Coronavirus (Scotland Act) 2020 could assist with the recovery from COVID-19, and contribute to rebuilding the economy”.*

*“Planning related knock-on effects of the development industry having been locked down, and working under the COVID restrictions, will last far longer than just the emergency period. Development delays could be so extensive that they are not factored into the measures brought forward to deal with planning permissions/deadlines. Given the current uncertainty and restricted council services, while offices are still closed, our members are concerned about permissions that are due to expire in the near future. They have suggested extending the provision to cover all permissions expiring in 2021 at the very least. More specifically they have suggested adding 12 months to each expiring consent”.*

**Homes for Scotland**

*“Homes for Scotland supports the further extension of the emergency provision extending the duration of planning consents. This will ensure sustainable, supported housing delivery opportunities are not lost during the ongoing pandemic. Home builders and planning authorities are working to ensure services function and homes continue to be delivered. The duration of consents provision helps ensure housing delivery is not compromised simply because*

*additional time may currently be needed to complete and then act upon a consent”.*

- 6.13.4 The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2020 amended the expiry of the “emergency period” to 31 March 2021 and the “extended period” to 30 September 2021 in both Acts. Further regulations<sup>36</sup> are expected to be laid in Parliament on 24 February 2021 to provide that both the “emergency period” and the “extended period” for both Planning and Listed Building Consent are to be amended further, with the “extended period” to be extended to 31 March 2022.
- 6.13.5 During the original consideration of the Coronavirus Bills the Scottish Government did not believe that these provisions had any impact on rights and equality. Since the Acts came into effect no issues have been raised or identified which has resulted in that initial assessment being revised.

#### **6.14 First Scottish Act: Section 8 and schedule 7, paragraphs 11 to 14 and 19 – Land Registration**

##### **Section 8 and schedule 7, paragraphs 11 to 14**

- 6.14.1 It is not clear that the Keeper of the Registers of Scotland can reopen the Registers of Scotland to physical mail and function safely at scale whilst adhering to public health guidance in the next six months.
- 6.14.2 The provisions have been well received, and solicitors and Registers of Scotland have invested in technology and business change to implement the provisions.
- 6.14.3 Until such time as the offices of the Keeper are fully reopened, remote electronic submission provisions will remain necessary as no practical alternative means of conveyancing deeds being registered exists.
- 6.14.4 The Keeper continues to review the use of the powers and engages directly with the Parliament via the Economy, Energy and Fair Work Committee on operational matters routinely, and this would be expected to continue. The Keeper has maintained a dialogue with key stakeholders including the Law Society of Scotland. Users of the portal have expressed a desire for ongoing use of the remote submission facility.
- 6.14.5 Consideration has been given to a wide range of areas including: equal opportunities, human rights and island communities. There remains no significant implications for human rights by the operation or extension of the provisions. It should also be noted that following recent consultation<sup>37</sup> by the Registers of Scotland on the possibility of making equivalent provision on a

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<sup>36</sup> The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021

<sup>37</sup> [Consultation paper - Registers of Scotland](#)

permanent basis, impact assessments are being prepared and will be published in due course.

### **Section 8 and schedule 7, paragraph 19**

- 6.14.6 The provisions related to advance notices have been well received having enabled property transactions underway at the date of Registers of Scotland office closures to continue to settle with confidence during the period when the property registers were closed, allowing the property market to continue to function and preventing transacting parties from experiencing personal or financial hardship
- 6.14.7 Following a commitment made during the progress of the Bill through Parliament, the Keeper has consulted with the Law Society of Scotland and agreed to fully reopen the application record and Register of Sasines on 1 March 2021. The practical effect of the reopening will be that the additional protection afforded to advance notices will fully lapse over the following 35 day period. While the majority of the advance notice provisions is to be expired on 30 March 2021, paragraph 19 requires to remain in force beyond 31 March 2021 for a further short period in order to ensure that the full protected period is applied to all advance notices entered onto the application prior to the register fully reopening. Although paragraph 19 will be extended by the extension regulations, should they be approved by Parliament, the provision will be spent by 6 April 2021. As it will have no ongoing effect past 6 April, the Scottish Government will make arrangements to expire the provision after that date when it is practicable to do so.
- 6.14.8 The full reopening of the registers and the protected period for advance notices reverting to the position prior to commencement of these provisions has been well communicated by the Keeper and via key representative bodies including the Law Society of Scotland. Details of the change have been published on the Keeper's website since 3 December 2020.
- 6.14.9 Consideration has been given to a wide range of areas including: equal opportunities, human rights and island communities. There remains no significant implications for human rights by the operation or extension of the provisions.

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

- 6.15.1 These provisions are necessary to enable the full range of registrations in the Register of Inhibitions (RoI) and the Register of Judgements (RoJ) while the Keeper's offices remain closed and she is unable to process paper registrations.
- 6.15.2 If the RoI provisions are not extended, creditors will not be able to use this means of safeguarding their position, leaving debtors free to transact with heritable property. Equally, debtors will be unable to discharge existing restrictions.

- 6.15.3 If the RoJ provisions are not extended beyond 31 March 2021, parties will be unable to register and then enforce certain court judgments from other jurisdictions.
- 6.15.4 In addition to consulting with the Lord President, these measures have been discussed with the Conveyancing Professorial Panel and shared with National Records of Scotland. Users of the portal have expressed a desire for ongoing use of the remote submission facility.
- 6.15.5 Consideration has been given to a wide range of areas including, equal opportunities, human rights and island communities. There remains no implications for human rights with no groups disadvantaged by the operation or extension of the provisions. It should also be noted that following recent consultation<sup>38</sup> by the Registers of Scotland on the possibility of making equivalent provision on a permanent basis, impact assessments are being prepared and will be published in due course.

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

- 6.16.1 These provisions allow the use of the made affirmative procedure for a Scottish Statutory Instrument that would otherwise be made under affirmative procedure, where this is necessary by reason of urgency. This power has not yet been used by Scottish Ministers.
- 6.16.2 With the intention that the Parliament will move into a campaign recess on 25 March, equivalent to a normal dissolution period, ahead of the Scottish General Election planned for May 2021, the Scottish Government is of the view that these provisions will continue to be necessary beyond 31 March 2021. There remains a need to have the ability to progress secondary legislation which would otherwise be made under the made affirmative procedure.
- 6.16.3 The Scottish Government is satisfied that the provisions are appropriate and proportionate in the current circumstances in order to provide both the Scottish Government and Parliament with the flexibility needed for any unexpected change in circumstances that may still arise due to the coronavirus.
- 6.16.4 The provisions would only be exercised when necessary, and no rights or equality implications have been identified in relation to extension of this provision.

#### **6.17 First Scottish Act: Schedule 7, paragraph 31 – Business improvement districts: extension of certain arrangements**

- 6.17.1 This provision extends the duration of certain business improvement district partnerships (BIDs) as provided for by the Planning etc. (Scotland) Act 2006 to 31 March 2021. It increased certainty for those BIDs that would otherwise have

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<sup>38</sup> [Consultation paper - Registers of Scotland](#)



had to ballot for renewal in 2020 during the COVID-19 pandemic enabling them to stay in operation and provide vital support to local businesses and communities.

- 6.17.2 To ensure BIDs benefit from the full extension provided for by the first Scottish Act, this provision should not be expired until after 31 March 2021 and should therefore be included in the extension of the Acts. As this provision expressly states that it extends some BIDs to 31 March 2021, and no further, it will have no legal effect beyond that date. The Scottish Government will therefore make the necessary arrangements to expire the provision when it is practicable to do so after 31 March 2021.

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

- 6.18.1 Carer's Allowance Supplement payments, which are payable in respect of the period 1 April 2020 to 30 September 2020, may sometimes be backdated more than twelve months due to backdating of the qualifying benefit, Carer's Allowance.
- 6.18.2 Ongoing engagement with carer organisations in Scotland on the impact of the coronavirus outbreak on unpaid carers was a key consideration in developing these provisions. The extension of these provisions will ensure that the Coronavirus Carer's Allowance Supplement can be paid to all eligible carers.
- 6.18.3 The provisions have no significantly different impact on island communities, local government or sustainable development. No detrimental effects are anticipated.
- 6.18.4 The additional payment of Carer's Allowance Supplement – the Coronavirus Carer's Allowance Supplement – is likely to have a disproportionately positive impact on women, as they make up more than two-thirds of recipients.
- 6.18.5 The Scottish Government also anticipates a disproportionately positive impact on disabled people, as the person the carer looks after will be disabled. The payment can help maintain the health and wellbeing of the carer, which has knock on positive impacts for the looked after person, and in cases where the carer lives with the cared for person, a potentially positive impact on overall household finances.
- 6.18.6 The Scottish Government has assessed the potential impact of extending the proposed measure on human and children's rights and has determined that no detrimental effects are anticipated.
- 6.18.7 Young carers under 16 will not benefit directly from the Coronavirus Carer's Allowance Supplement, as it is necessary to be 16 or over to apply for Carer's Allowance which is an income replacement benefit. However, there will be indirect positive impacts on children and young people who are cared for by someone in receipt of Carer's Allowance.

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

- 6.19.1 With most of Scotland having level 4 measures applied to it as a result of the new, more transmissible variant of the virus becoming the dominant strain in Scotland, it remains a very real possibility that social care workers may be required to self-isolate. It is therefore the Scottish Government's view that these provisions should be extended since they support infection prevention and control in care homes and in the community. The provisions also support the Scottish Government's overall commitment to fair work in the social care sector.
- 6.19.2 Without the provisions of this Fund, many social care workers may experience financial hardship if they were absent from work due to having a confirmed case of coronavirus, or self-isolating in line with public health guidance. This is because their employment terms and conditions are such that they would receive Statutory Sick Pay or another amount which is less than their expected income.
- 6.19.3 The Fund goes some way to ensuring those with less favourable terms and conditions do not experience financial hardship due to not being able to work due to coronavirus. It will also help to ensure workers do not feel pressure to attend shifts when ill with coronavirus or self-isolating, by make their normal pay available to them in those circumstances.
- 6.19.4 The Scottish Government continues to liaise closely with key stakeholders in relation to this provision, as demonstrated by the extensive consultation carried out when developing both the Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020<sup>39</sup> and the Social Care Staff Support Fund (Coronavirus) (Scotland) Amendment Regulations 2020<sup>40</sup> made under this provision.
- 6.19.5 In considering impacts on rights and equality, no additional implications have been identified in the review of the extension of these provisions.

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

- 6.20.1 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. The purpose of a named person is one of safeguarding which not only allows for the patient to be represented, it also helps the patient exercise their rights.
- 6.20.2 This change keeps the safeguards a named person offers but crucially helps minimise the disruption caused by the pandemic, therefore, both the patient and the proposed named person are still required to fulfil the original process which requires for this to be made in writing.

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<sup>39</sup> [The Social Care Staff Support Fund \(Coronavirus\) \(Scotland\) Regulations 2020](#)

<sup>40</sup> [The Social Care Staff Support Fund \(Coronavirus\) \(Scotland\) Amendment Regulations 2020](#)

- 6.20.3 There are no changes to the process for the patient. The safeguards around the nomination process are unaffected and in particular, nominations continue to have to be made in writing. The patient will still require to have their signature witnessed by a prescribed person. The prescribed person in witnessing the signature will be certifying that they believe that the patient understands the effect of their nomination and that the patient also has not been subject to any undue influence in making the nomination.
- 6.20.4 The Scottish Government has assessed whether there was potential for these temporary measures to impact on equal opportunities and it was determined that they do not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership), either directly or indirectly.
- 6.20.5 The provisions ensure that patients still have the ability to choose their own named person, while minimising any delays in the process of nomination caused by the outbreak.
- 6.20.6 Extending the provision will continue to ensure that the patient still has the ability to choose their own representation. It also provides for a named person to act for the patient, and has helped reduce any delays in having the patient involved in their care and treatment decisions. This approach continues to respect their rights and allows services to be delivered effectively during the pandemic.
- 6.20.7 It therefore remains proportionate to the threat posed by the pandemic and still very much required.

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

- 6.21.1 These powers have been put in place to allow Health Boards and Scottish Ministers to make swift interventions in care homes when it is considered the tests for intervention set down in section 63A and B and 65A of the Public Services Reform (Scotland) Act 2010 ('the 2010 Act') have been met. The circumstances in which the Scottish Government would expect the powers in both section 63A and B and section 65A of the 2010 Act to be used, however, are rare. The standard and quality of care in care homes in Scotland is predominately high and the circumstances which these powers relate to are where there is, for a reason relating to coronavirus, a serious and imminent risk to life or health, or a serious risk to life, health or wellbeing (in relation to the powers in section 65A of the 2010 Act regarding immediate emergency intervention and general emergency intervention orders respectively) or a material risk to health of people in a care home (in relation to the powers at sections 63A and B of the 2010 Act).
- 6.21.2 The virus is still present, following a resurgence over the last few months, and there is now evidence of new and emerging strains. These strains are more easily transferred and have contributed significantly to the recent surge of infections.

- 6.21.3 As a result, Scotland continues to see significant outbreaks in care homes. It is not only the nature of the residents that makes them susceptible to coronavirus, but also the fact that they all live together in close proximity with shared staff. There is a greater risk of the virus spreading in care homes. Good progress is being made in vaccinating care home residents and staff, with the majority now vaccinated with their first dose. This will protect the majority of residents from getting seriously ill with the virus. However it is not known yet if vaccination prevents transmission of the virus, if it protects all known variants of the virus or exactly how long this protection will last. More evidence is needed to establish this.
- 6.21.4 It is therefore the opinion of the Scottish Government that these powers should be extended beyond 31 March 2021 as they provide important assurance to those who depend on care services, their families, and the staff that deliver care, that swift action and additional oversight and support is available in the rare circumstances that it may be required.
- 6.21.5 The Scottish Government has considered the potential impact of extending these provisions on those with protected characteristics, and it does not envisage any adverse impact. It is not anticipated that these provisions will have any significant adverse impact on human rights.
- 6.21.6 If Scottish Ministers decide to take emergency intervention action, they require to make an application to the court under section 65A of the 2010 Act seeking permission to intervene in a care home, upon which application a court will give further consideration to the impact of any intervention on human rights and the balance of those rights. This includes consideration of how intervention seeks to safeguard and protect the human rights of residents and staff during this pandemic, particularly in relation to health and life, as well as other rights and protections. Where Scottish Ministers decide it is essential for a reason relating to coronavirus and in order to prevent an imminent and serious risk to the life or health of persons at a care home, the court application is to be made within 24 hours of emergency intervention. This allows immediate and proportionate safeguard of life and health at the care home on an urgent but limited basis, pending urgent consideration from the court and its ultimate decision.
- 6.21.7 A Health Board is under a similar obligation in relation to the use of its power of direction under section 63A of the 2010 Act. Directions must also be drafted with regard to any guidance issued by Scottish Ministers in relation to the exercise of this power. If it is needed, a Health Board can only enter a care home to enforce a direction if permitted by a care home provider or if a warrant has been granted by the courts. The court will consider the impact of human rights when granting any warrant to enter and take the necessary steps.

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

- 6.22.1 The legislation builds on established powers and ensures, provided there is agreement, that action can be taken to acquire a care home or a care at home

service which seeks to ensure the continuity of care is not jeopardised. These emergency provisions create powers in relation to the acquiring of care homes and care at home services. These types of transactions require detailed due diligence exercises to be carried out as well as practical discussions around matters such as budget, transition, employment considerations and property legalities. These matters require time. If action is required, the extension of these emergency provisions would also provide much clarity and benefit.

- 6.22.2 These powers enable a Local Authority or a relevant health body to act to acquire a care home service or Local Authority to acquire a care at home service in circumstances relating to coronavirus where the provider is in serious financial difficulty; the Local Authority or health body is satisfied there is a threat to the life, health or wellbeing of people receiving the service; or where a provider has recently stopped providing the services.
- 6.22.3 These powers enable a Local Authority or relevant health body to act to safeguard the interests of the residents of a care home. Equally, and where there is agreement in relation to acquisition of the service, these powers seek to ensure a Local Authority can quickly put in place continuity of care for those who receive a care at home service.
- 6.22.4 While coronavirus is still present in the population, especially given a resurgence of the virus including new strains, the safety net and assurance these powers provide is still needed. These new strains are more easily transferred and have contributed significantly to the recent surge of infections including outbreaks in care homes. As already stated in paragraph 6.21.3, it is not only the nature of the residents that makes them susceptible to coronavirus, but also the fact that they all live together in close proximity with shared staff. There is therefore a greater risk of the virus spreading in care homes. Where care homes have outbreaks these are significant, often requiring mutual support from local partners. While good progress is being made in vaccinating care home residents and staff, more evidence is needed to establish how vaccination might prevent transmission or protect from all strains.
- 6.22.5 The Scottish Government has considered the potential impact of extending these provisions on those with protected characteristics and on human rights. Given the voluntary nature of the powers and that both parties involved in any transaction are to reach agreement about the acquisition of any property, it does not envisage any adverse impact on these matters.

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

- 6.23.1 There are two provisions which have extended the reporting work undertaken by the Scottish Government and Care Inspectorate in relation to care homes for the duration of the emergency period. The provisions introduce the publication of two reports that are laid before the Scottish Parliament: a fortnightly report by the Care Inspectorate on inspections of adult care homes, setting out which care home services it has inspected, the findings of those inspections, and evaluation gradings; and a weekly report on the number of deaths, including

those relating to coronavirus, as notified by care home service providers to the Care Inspectorate. This is laid on behalf of Scottish Ministers.

### **Fortnightly report on inspections**

- 6.23.2 In response to the pandemic, the Care Inspectorate has adopted an intelligence led and risk based diagnostic approach, focussing their scrutiny activity on care services where the potential for serious concerns has been identified.
- 6.23.3 The fortnightly report on inspections enables the Care Inspectorate not only to publish their initial findings and evaluations of care home services, but demonstrates through follow up inspection reports that sustained improvement and support can make a positive impact in the quality of care during this unprecedented and challenging period.
- 6.23.4 The Scottish Government invited the views of the Care Inspectorate on extending these provisions and consideration has been given to the issues they raised.
- 6.23.5 The Scottish Government acknowledges that the Care Inspectorate's resources remain under pressure during the pandemic, and that this is one of many competing priorities that the Care Inspectorate is successfully delivering in response to the pandemic. It is also recognised that the publication of full inspection reports is now taking place much more quickly than in the early stages of the pandemic.
- 6.23.6 However, the fortnightly reports on inspections have been helpful in getting information into the public domain 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 remains understandably high.
- 6.23.7 There is good evidence that scrutiny supports improvement. These reports help to highlight good practice and areas for improvement quickly during the pandemic in an open and transparent way. This is particularly useful in regard to Key Question 7 of the Care Inspectorate's quality framework which focuses on matters relating to COVID-19<sup>41</sup>.
- 6.23.8 The coronavirus pandemic remains, and there is still an expectation from Scottish Ministers, Parliament and the public to have access to a report of this kind, where care home services identified as having serious quality of care issues, and impacted by COVID-19, are collated in a single document. While good progress is being made in vaccinating care home residents and staff, more evidence is needed to establish how vaccination might prevent transmission or protect from any new strains. It remains uncertain how circumstances might change as the pandemic continues. These reporting duties help to support the Scottish Government's commitment to transparency in the delivery, scrutiny and improvement of care services.

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<sup>41</sup> [Care Inspectorate: Quality indicators - Key question 7](#)

6.23.9 The view of the Scottish Government is that this process should remain in place for another six months or until such earlier time that the threat from coronavirus has been substantially reduced. The Scottish Government will continue to review this position in consultation with the Care Inspectorate.

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

6.23.10 The Scottish Government and its partners, including the Care Inspectorate, have developed and established a number of improved data modelling during the pandemic. This has helped us to better understand the impact of COVID-19 across the country, including in care home services, and to inform the Scottish Government's response. The weekly reporting on deaths in care homes through the Care Inspectorate remains a key part to the overall process during the pandemic.

6.23.11 The Care Inspectorate should continue to report weekly to the Scottish Government, and in turn the report should be laid before Parliament. This will continue to provide transparency on all deaths reported by care homes to the Care Inspectorate, and those suspected or confirmed as being related to COVID-19.

6.23.12 For the purposes of the Care Inspectorate's continued understanding of the quality of care in care homes, it would be helpful to retain section 79A of the 2010 Act for another six months or until such earlier time that the threat from coronavirus has been substantially reduced. The Scottish Government will regularly review this position.

6.23.13 The Scottish Government does not expect there to be an adverse impact on human rights or equality matters but is aware of the potential impact of increased monitoring and reporting on individual care homes at this difficult time. The Scottish Government will continue to work with its partners, providers of services and their representative bodies on how it can ease the burden on the sector and will continue to ensure human rights and equality issues are at the forefront as we respond to the pandemic.

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

6.24.1 Section 101 of the Public Services Reform (Scotland) Act 2010 ('the 2010 Act') sets out how Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate) is to give a notice to a person providing, or seeking to provide, a care service when required. Paragraph 5 of schedule 4 modifies section 101 of the 2010 Act during the emergency period (the period for which paragraph 5 is in force). It temporarily changes the law on giving notice by "personal service" in relation to corporate bodies, and on giving notice electronically. This provision enables the Care Inspectorate, when delivering a notice personally to a body corporate (for instance, following an on-site inspection), to serve it on a wider range of people, including a care home manager or a director, secretary or other similar officer of the body. It also

enables the Care Inspectorate to send formal notices to registered care service providers, and those seeking to provide a care service, by electronic means for the duration of the emergency period.

- 6.24.2 The view of the Scottish Government is that the provisions need to be extended beyond 31 March 2021 given business practices are not yet operating as they normally do due to the pandemic. Furthermore, the emergence of new variants of coronavirus has caused a tightening of restrictions, leading to further impact on business, and this provision allows that notices can continue to be served at the earliest opportunity to care home managers and a wider group of representatives of that care service provider where there is an immediate need to do so.
- 6.24.3 This provision enables the Care Inspectorate to safely and quickly perform its statutory duties during the emergency period. The Scottish Government does not expect there to be an adverse impact on rights, equality matters, or on the operational business of organisations as a result of this provision being extended.
- 6.24.4 The Scottish Government invited the views of the Care Inspectorate on extending the provisions and it was supportive of the proposal.

#### **6.25 Second Scottish Act: Schedule 1, paragraph 24 – Marriage and Civil Partnership**

- 6.25.1 It is already the Scottish Government's policy to ensure the continued availability of marriage and civil partnership and the provision in the second Scottish Act has not to date been instrumental in achieving that. Further, the right of men and women of marriageable age to marry is already protected by Article 12 of the ECHR. However, the provision is being suspended from 30 March 2021, in order to take account of the possibility that the restrictions on marriage and civil partnership could be subject to further adjustment as a consequence of the pandemic. In doing so, the provision could be revived during the extension period to reinstate the requirement to report to the Scottish Parliament if needed. More information can be found in the Policy Note to the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provisions) Regulations 2021<sup>42</sup>.

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

- 6.26.1 As a result of the pandemic a significant number of student accommodation properties will continue to remain empty with landlords receiving no income. While the virus is still present and lockdown measures are in place it is the opinion of the Scottish Government that this measure should remain in force, to provide support to those businesses that rely on students renting their properties during term time.

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<sup>42</sup> To be laid in Parliament on 24 February 2021



6.26.2 No equality or human right implications have been identified or raised since these provisions came into effect.

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

6.27.1 Coronavirus-related grants will continue to be required by businesses in Scotland for some time to come. This measure is intended to ensure that businesses in Scotland contribute a fair share of tax.

6.27.2 The Scottish Government believes that is essential that everyone pays a fair share of tax to fund the vital services and infrastructure on which we rely, now more than ever. Those who have chosen not to contribute their fair share should not expect to receive financial assistance and support.

6.27.3 This measure therefore continues to be necessary.

**7. Summary of recommendations made in relation to extending, expiring or suspending provisions in the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland)(No. 2) Act 2020**

<b>Coronavirus (Scotland) Act 2020</b>				
<b>Provision</b>	<b>Subject</b>	<b>Action</b>	<b>Relevant section of statement</b>	<b>Further information</b>
Schedule 1	Eviction from dwelling-houses	<b>Extension</b>	See from section <a href="#">6.1.1</a>	
Schedule 2	Temporary extension of moratoriums on diligence	<b>Extension</b>	See from section <a href="#">6.3.1</a>	
Schedule 3: paragraphs 1-10	Children	<b>Expiry</b> - para 2(2)  <b>Extension</b> - remainder of paras	See section <a href="#">6.4.37</a>  See from section <a href="#">6.4.1</a>	<ul style="list-style-type: none"> <li>• See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021 for information on expiry of para 2(2)</li> <li>• Paragraph 6 (children in secure accommodation) was expired by <a href="#">The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020</a></li> </ul>
Schedule 3: paragraph 11	Vulnerable adults	<b>Suspension already in force</b> <b>Extension</b>	See from section <a href="#">6.5.1</a>	
Schedule 4: paragraphs 1-6	Courts and Tribunals: conduct of business by electronic means	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraph 7	Fiscal fines	<b>Extension</b>	See from section <a href="#">6.6.1</a>	

Schedule 4: paragraphs 8 and 9	Cases beginning with an appearance from custody	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraph 10	Extension of time limits	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraph 11	Evidence	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraphs 12 - 16	Community orders	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraphs 17 and 18	Parole Board	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraphs 19 and 20	Release of prisoners	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraphs 21 - 23	Legal aid	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 5	Alcohol licensing	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 6: paragraph 1	Licensing other than alcohol licensing	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 6: paragraphs 2 -7	Freedom of Information	<b>Extension</b>	See from section <a href="#">6.7.1</a>	
Schedule 6: paragraphs 8 - 10	Duties in respect of reports and other documents	<b>Extension</b>	See from section <a href="#">6.8.1</a>	
Schedule 6: paragraphs 11-14	Local authority meetings	<b>Extension</b>	See from section <a href="#">6.9.1</a>	
Schedule 6: Para 15	Duties under the Public Finance and Accountability (Scotland) Act 2000	<b>Extension</b>	See from section <a href="#">6.10.1</a>	

Schedule 7: paragraphs 1 – 5	Social security	<b>Extension</b>	See from section <a href="#">6.11.1</a>	
Schedule 7: paragraphs 6 and 7	Irritancy clauses in commercial leases	<b>Extension</b>	See from section <a href="#">6.12.1</a>	
Schedule 7: paragraphs 8 – 10	Duration of planning permission	<b>Extension</b>	See from section <a href="#">6.13.1</a>	
Schedule 7: paragraphs 11-19	Land registration: period of effect of advance notice	<b>Extension</b> - paragraphs 11-14 and 19  <b>Expiry</b> - paragraphs 15-18 from 30 March  <b>Expiry</b> – proposed expiry of para 19 from 6 April 2021	See from section <a href="#">6.14.1</a>  See from section <a href="#">6.14.6</a>	See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021
Schedule 7: paragraphs 20 – 22	Anatomy Act 1984	<b>Expiry</b>	No reference	See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021
Schedule 7: paragraphs 23-30	Scrutiny of subordinate legislation in urgent cases	<b>Extension</b>	See from section <a href="#">6.16.1</a>	
Schedule 7: paragraph 31	Business improvement districts	<b>Extension</b>  <b>Proposed expiry from 1 April 2021</b>	See from section <a href="#">6.17.1</a>	

Schedule 7: paragraphs 32 and 33	Muirburn	<b>Expiry</b>	No reference	See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021
<b>Coronavirus (Scotland) (No. 2) Act 2020</b>				
<b>Provision</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Relevant section of statement</b>	<b>Further information</b>
Schedule 1: paragraphs 1 – 3	Student residential tenancies	<b>Extension</b>	See from section <a href="#">6.2.1</a>	
Schedule 1: paragraphs 4 and 5	Tenancies pre-action requirements	<b>Extension</b>	See from section <a href="#">6.1.16</a>	
Schedule 1: paragraph 6	Carer's allowance supplement	<b>Extension</b>	See from section <a href="#">6.18.1</a>	
Schedule 1: paragraph 7	Social care staff support fund	<b>Extension</b>	See from section <a href="#">6.19.1</a>	
Schedule 1: paragraphs 8 – 14	Bankruptcy	<b>Extension</b> (some will be expired if draft Bankruptcy Regulations to make equivalent provision that is not time-limited are approved)	See from section <a href="#">6.3.7</a>	See the draft <a href="#">Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021</a>
Schedule 1: paragraph 15	Mental health	<b>Extension</b>	See from section <a href="#">6.20.1</a>	
Schedule 1: paragraphs 16 - 17	Care Homes - Emergency directions and emergency intervention orders	<b>Extension</b>	See from section <a href="#">6.21.1</a>	

Schedule 1: paragraphs 18 to 21	Powers to purchase care home services and care at home providers	<b>Extension</b>	See from section <a href="#">6.22.1</a>	
Schedule 1: paragraphs 22 and 23	Care homes – further provision	<b>Extension</b>	See from section <a href="#">6.23.1</a>	
Schedule 1: paragraph 24	Marriage and civil partnership	<b>Suspension from 30 March 2021</b>  <b>Extension</b>	See section <a href="#">6.25.1</a>	See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021
Schedule 2: paragraphs 1 to 6	Criminal justice	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 2: paragraph 7	Criminal justice - Fixed Penalty Notices	<b>Expiry</b>	No reference	See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021
Schedule 2: paragraphs 8 and 9	Proceeds of crime	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 2: paragraph 10	Intimation of documents	<b>Extension</b>	See from section <a href="#">6.6.1</a>	
Schedule 4: paragraph 2	Listed buildings and conservation areas	<b>Extension</b>	See from section <a href="#">6.13.1</a>	
Schedule 4: paragraph 3 and 4	Registers kept by the Keeper of the Registers of Scotland	<b>Extension</b>	See from section <a href="#">6.15.1</a>	
Schedule 4: paragraph 5	Care Inspectorate Notices	<b>Extension</b>	See from section <a href="#">6.24.1</a>	
Schedule 4: paragraph 9	Execution of documents	<b>Extension</b>	See from section <a href="#">6.6.1</a>	

Schedule 4: paragraphs 10 to 12	Freedom of Information	<b>Extension</b>	See from section <a href="#">6.7.9</a>	
Schedule 4: paragraph 13	Low emission zones	<b>Expiry</b>	No reference	See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021
Schedule 4: paragraph 14	Council tax – exempt dwellings	<b>Extension</b>	See from section <a href="#">6.26.1</a>	
Schedule 4: paragraph 15	Traffic Regulation	<b>Expiry</b>	No reference	See the Policy Note accompanying the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provision) Regulations 2021
Schedule 4: paragraph 16	Restriction on giving grant to businesses connected to tax havens	<b>Extension</b>	See from section <a href="#">6.27.1</a>	



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