

# **CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022**

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## **EXPLANATORY NOTES**

### **THE ACT: OVERVIEW**

#### **Part 3: Public Service Reform**

##### **Bankruptcy**

77. This Part of this Act makes a series of amendments to the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”), making similar provision (with some modifications) to the temporary changes to the 2016 Act made by schedule 2 of the Coronavirus (Scotland) Act 2020 and schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020.

##### ***Section 19: Bankruptcy: service of documents***

78. This section inserts a new section 224A into the 2016 Act, which applies whenever the 2016 Act, or regulations made under it, authorises or requires a document to be served on a person, whatever particular wording is used to describe this. The new section 224A(1) allows service of a document by personal delivery, by post or by electronic transmission.
79. **Section 224A(2)** and **(3)** set out the practicalities of serving a document under the 2016 Act by post, including when receipt is deemed to have taken place.
80. **Section 224A(4)** provides further detail in relation to documents served by electronic means. Electronic transmission of a document must be effected in a manner that the recipient has indicated to the sender that they are willing to receive the document electronically. Subsection (4)(b) makes provision as to the circumstances in which willingness to receive a document electronically may be given or inferred. Subsection (4)(c) provides that uploading a document to an electronic storage system from where it may be downloaded by the recipient may constitute electronic transmission, where the recipient is sent a notification that the document has been uploaded in that way. Finally, subsection (4)(d) provides that a document transmitted electronically is to be taken to have been received on the day on which transmission took place: however this is only a presumption which can be displaced if there is evidence to the contrary.
81. The effect of subsection (5) is that different provision may be made regarding the service of documents by rules of court, or by an order of court depending on the circumstances of an individual case, and the rest of section 224A will not apply.
82. Subsection (3) of section 15 repeals section 187 of the 2016 Act, which previously only applied to Part 14 of the 2016 Act on administration, accounting and discharge, as the new section 224A is to apply across the whole of the 2016 Act’s provisions.
83. Subsection (4) of section 15 makes transitional provision to ensure that the new law represented in section 224A only applies to documents served on or after

the commencement date of 1 October 2022 (see section 59 for commencement arrangements).

***Section 20: Bankruptcy: meaning of “qualified creditor” and “qualified creditors”***

84. This section amends the definitions of “qualified creditor” and “qualified creditors” in section 7(1) of the 2016 Act by raising the amount of money a creditor or a group of creditors must be owed in order to be “qualified” from £3,000 to £5,000. A qualified creditor has the right to petition the court for a debtor’s bankruptcy in terms of section 2(1)(b)(i) of the 2016 Act, where the debtor is apparently insolvent. The new definition will apply in relation to any sequestration in respect of which the petition was presented on or after the commencement date of 1 October 2022 (see section 59 for commencement arrangements).

***Section 21: Bankruptcy: remote meetings of creditors***

85. This section amends schedule 6 of the 2016 Act to allow meetings of creditors to take place using electronic means, as well as in person.
- Diligence

***Section 22: Bank arrestments: protected minimum balance***

86. This section of this Act relates to the sum that is protected in an individual’s bank account when a bank arrestment is executed under the law on diligence for a debt owed. This is known as the protected minimum balance and previously, under the Debtors (Scotland) Act 1987, had been linked to the monthly threshold for earnings arrestment, which is a different type of diligence.
87. Section 73F of the Debtors (Scotland) Act 1987 is amended to de-couple the arrangements for fixing the protected minimum balance from the provisions that set the minimum monthly salary limits for earning arrestments. The protected minimum balance for bank arrestments is raised to £1,000, and a power is provided for the Scottish Ministers to amend the protected minimum balance in the future through negative procedure regulations. However, the new law has no effect in relation to an arrestment executed before the commencement date of 1 November 2022 (see section 59 for commencement arrangements).

***Section 23: Period of moratorium on diligence***

88. This section increases the length of the moratorium against diligence created by sections 195 to 198 of the Bankruptcy (Scotland) Act 2016, from a period of 6 weeks to 6 months. Subsection (3) makes a consequential change to the arrangements for those in a moratorium who then enter a protected trust deed, allowing the moratorium to remain in place beyond 6 months for a further 7 weeks, in order to allow sufficient time for the registration of protected status

***Section 24: Power to amend period of moratorium on diligence***

89. This section adds to the amendment of section 198 of the Bankruptcy (Scotland) Act 2016 effected by section 23 by providing the Scottish Ministers with a power to amend the period of the moratorium against diligence through affirmative procedure regulations.

**Registration of births**

***Section 25: Giving information of particulars of birth remotely***

90. This section amends the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (“the Registration Act”) to enable the process for registering a birth to be carried out remotely, and also to facilitate registers being kept electronically.

*These notes relate to the Coronavirus (Recovery and Reform) (Scotland)  
Act 2022 (asp 8) which received Royal Assent on 10 August 2022*

91. Prior to the amendment coming into force, registering a birth normally required that a parent of the child, or another person in certain circumstances, provide the district registrar with details of the birth in person. The registration form then had to be signed in the registrar's physical presence.
92. [Section 25](#) amends section 14(1A) of the Registration Act to enable district registrars to set out alternative ways of providing them with details of a birth. District registrars will only be able to offer alternatives that have been approved by the Registrar General for Scotland (see new section 14A(1), inserted by section 25(3) of this Act).
93. [Section 25](#) further amends section 14(1A) of the Registration Act so that alternative ways of providing details of a birth can be set at a national level by the Registrar General for Scotland.
94. The amendments to section 14 provide that where the informant can provide information remotely or attest a birth registration form remotely, the choice of whether to do so is for the informant.
95. New section 14A requires that any directions setting out alternatives to physically attending a registration office to provide details of a birth be put in the public domain. It ensures that directions can be changed or withdrawn. And it makes clear that although district registrars, and the Registrar General, have the option of allowing details of births to be provided otherwise than by physically attending a registration office, they are not required to do so.
96. [Section 25](#) also allows for the registration form to be attested without requiring that the person attesting it do so physically. As mentioned, attestation of the form currently entails physically signing it in the registration office. New subsection (1C) of section 14 of the Registration Act (inserted by section 25(2)(c) of this Act) provides two options for attesting a registration form:
  - the form might be attested by the person providing the details of the birth through a process that the Registrar General has approved, or
  - an official might attest the form on the person's behalf (for example by transposing the person's signature onto an electronic version of the form), which must also be done in a way approved by the Registrar General.
97. [Section 25](#) makes similar adjustments to sections 16, 18 and 18B of the Registration Act. Section 16 deals with the completion of a birth registration form in a case where nobody has done so within the period required by section 14. Amendments to section 16 provide that where the informant can provide information remotely or attest a birth registration form remotely, the choice of whether to do so is for the informant.
98. [Section 18](#) of the Registration Act deals with the joint registration of a child's birth by the child's mother and father in cases where they are not married to, or in a civil partnership with, one another. Section 18B deals with the joint registration of a child's birth by the child's mother and another woman in cases where they are not married to, or in a civil partnership with, one another. The amendments made by section 25 of this Act allow those registration processes to be carried out remotely too and allow a birth registration form to be attested on a person's behalf (whether or not the particulars of birth are given remotely). Amendments to section 18 provide that where the informant can attest a birth registration form remotely, the choice of whether to do so is for the informant.
99. The adjustments made to section 16B(2) of the Registration Act by section 25 of this Act, and the insertion of new section 21A, are consequential on those already discussed. Section 16B(2) prevents the registration of a birth from being completed, where the birth registration form has been completed remotely, until a public authority (such as a health board) has confirmed the details of the birth. Section 25 of this Act amends section 16B so that it refers to the processes for completion of birth certificates enabled

by the amendments discussed above. The new section 21A of the Registration Act defines “birth registration form”, following the repeal of the original definition as part of the modifications made to section 14.

## **Registration of deaths**

### ***Section 26: Funeral director giving information of particulars of death***

100. This section amends the Registration Act so that a funeral director can provide details of a death for registration purposes on behalf of a person who would otherwise have a legal duty to provide them under section 23(1) of the Registration Act. The effect of the amendment is that anyone subject to that duty is absolved from having to comply with it once the funeral director has given a district registrar the required information.
101. This section’s amendment to section 23(1A) of the Registration Act means that a funeral director is to give information about a death in the same way as a person subject to the duty to do so under section 23(1).

### ***Section 27: Giving information of particulars of death remotely***

102. This section amends the Registration Act to enable the process for registering a death to be carried out remotely, and also to facilitate registers being kept electronically.
103. Prior to the modifications made by the Act taking effect, registering a death normally required that a person (commonly a relative of the deceased) provide the district registrar with details of the death in person. The registration form then had to be signed in the registrar’s physical presence.
104. **Section 27** amends section 23(1A) of the Registration Act to enable district registrars to set out alternative ways of providing them with details of a death. District registrars will only be able to offer alternatives that have been approved by the Registrar General for Scotland (see new section 23A(1), inserted by section 27(3) of this Act).
105. **Section 27** further amends section 23(1A) of the Registration Act so that alternative ways of providing details of a death can be set at a national level by the Registrar General for Scotland. Amendments to section 23 provide that where the informant can provide information remotely or attest a death registration form remotely, the choice of whether to do so is for the informant.
106. New section 23A requires that any directions setting out alternatives to physically attending a registration office to provide details of a death be put in the public domain. It ensures that directions can be changed or withdrawn. And it makes clear that although district registrars, and the Registrar General, have the option of allowing details of a death to be provided otherwise than by physically attending a registration office, they are not required to do so.
107. **Section 27** also allows for the registration form to be attested without requiring that the person attesting it do so physically. As mentioned, attestation of the form currently entails physically signing it in the registration office. New subsection (1C) of section 23 of the Registration Act (inserted by section 27(2)(b) of this Act) provides two options for attesting a registration form:
  - the form might be attested by the person providing the details of the death through a process that the Registrar General has approved, or
  - an official might attest the form on the person’s behalf (for example by transposing the person’s signature onto an electronic version of the form), which must also be done in a way approved by the Registrar General.
108. **Section 27(3A)** makes similar adjustments to section 25 of the Registration Act. Section 25 deals with the completion of a death registration form in a case where nobody has

done so within the period required by section 23. Amendments to section 25 provide that where the informant can provide information remotely or attest a death registration form remotely, the choice of whether to do so is for the informant.

109. The adjustments made to section 25B(2) of the Registration Act by section 27 of this Act, and the insertion of new section 28A, are consequential on those already discussed. Section 25B(2) prevents the registration of a death from being completed, where the death registration form has been completed remotely, until a public authority (such as a health board) has confirmed the details of the death. Section 27 of this Act amends section 25B so that it refers to the processes for completion of death certificates enabled by the amendments discussed above. The new section 28A of the Registration Act defines “death registration form”, following the repeal of the original definition as part of the modifications made to section 23.

## **Further modifications of the Registration of Births, Deaths and Marriages Act**

### ***Section 28: Regulations under the 1965 Act***

110. This section amends the Registration Act to ensure that the powers that Act confers on the Scottish Ministers to make regulations can be exercised to make different provision for different cases or circumstances.

## **Civil Partnership Register**

### ***Section 29: Power to make a register electronic***

111. This section amends the Civil Partnership Act 2004 to enable civil partnership registers to take electronic (rather than paper-based) form if the Registrar General for Scotland so determines. This mirrors the position in relation to other registers (including a register of marriages) under section 32(1A) of the Registration Act.

## **Civic licensing**

### ***Section 30: Civic licensing: how hearings may be held***

112. This section makes similar provision to civic licensing as is made for alcohol licensing by section 32 of this Act (see paragraphs 117-120 below). A new paragraph 18B is inserted into schedule 1 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”), giving a licensing authority the ability to hold a licensing hearing through remote facilities, as well as in person, or through a mixture of both (often called a “hybrid” format). Sub-paragraph (3) of paragraph 18B defines “remote facilities” for these purposes, a definition which would include telephones and video conferencing software.
113. Sub-paragraph (2) of paragraph 18B ensures that any views which participants at a licensing hearing may offer with regard to the appropriate format for the hearing must be taken into account by a licensing authority, prior to finalising its decision on the format. This applies to anyone who notifies the authority of their intention to participate, such as the licence holder or an objector.
114. Equivalent provision is then made for licensing hearings for sex shops and sexual entertainment venues by the insertion of a new paragraph 24B into schedule 2 of the 1982 Act.

### ***Section 31: Civic licensing: how notices may be published***

115. Schedule 1 of the 1982 Act provides that licensing authorities must give public notice of certain applications that are made to them and may give public notice in other cases. This is to be given by publication of a notice in a newspaper or newspapers circulating in the area of the licensing authority (as per paragraph 2(8) of schedule 1).

Similarly, schedule 2 of the 1982 Act requires applicants for the grant or renewal of a sex shop licence to give notice of the application by publishing an advert in a newspaper specified by the local authority to supply a copy of the advert to the local authority (as per paragraph 7(1)-(2) of schedule 2). Section 45B of the 1982 Act then applies the same requirements (with certain modifications, including one relating to giving notice electronically, which section 31(2) supersedes) to the licensing of sexual entertainment venues.

116. Schedule 6 of the Coronavirus (Scotland) Act 2020 temporarily modified these notice requirements in the 1982 Act in order to allow notice to be given by publication of a notice on the local authority's website (in the case of sex shops and sexual entertainment venues) or the licensing authority's website (in the case of other civic licensing). Section 31 of this Act gives these modifications permanent effect.

## **Alcohol licensing**

### ***Section 32: Alcohol licensing: how hearings may be held***

117. This section makes similar provision to alcohol licensing as is made for civic licensing by section 30 of this Act, replicating the temporary modifications to the Licensing (Scotland) Act 2005 ("the 2005 Act") made by paragraph 1 of schedule 5 of the Coronavirus (Scotland) Act 2020.
118. A new section 133A is inserted into the 2005 Act, giving a Licensing Board the ability to hold a licensing hearing through remote facilities, as well as in person, or through a mixture of both (often called a "hybrid" format). Subsection (3) of section 133A defines "remote facilities" for these purposes, a definition which would include telephones and video conferencing software.
119. Subsection (2) of section 133A ensures that any views which participants at a licensing hearing may offer with regard to the appropriate format for the hearing must be taken into account by a Licensing Board, prior to finalising its decision on the format. This applies to anyone who notifies the Board of their intention to participate, such as the licence holder or an objector.
120. Equivalent provision is then made for Licensing Board meetings by amendments to paragraph 12 of schedule 1 of the 2005 Act. In addition, because the existing paragraph 12(2) requires that Licensing Board meetings are held in public, a new paragraph 12(2A) is inserted in order to clarify that this requirement for public access is complied with, where a remote or hybrid meeting is held, by the Board enabling the public to observe the meeting remotely – for example through the public provision of a web link to the meeting.

## **Land registration**

121. This part of this Act makes a series of changes to the law of land registration, making similar provision to the temporary modifications made by schedule 7 of the Coronavirus (Scotland) Act 2020 and schedule 4 of the Coronavirus (Scotland) (No.2) Act 2020.

### ***Section 33: Electronic submission of copies of deeds and writs to Registers of Scotland***

122. This section amends the Land Registration etc. (Scotland) Act 2012 and the Land Registers (Scotland) Act 1868 to make provision for registration in the Land Register and recording in the Register of Sasines to proceed on a copy of a deed submitted to the Keeper of the Registers by electronic means.
123. Subsections (1) and (2) of this section make provision for the Land Register, amending section 21 of the 2012 Act. The new section 21(5) sets out that a copy of a deed submitted electronically is sufficient to allow registration to proceed. Inserted

section 21(6) provides that this applies when the means and form for electronic submission of copy deeds are specified as acceptable on the Keeper's website. Inserted section 21(7) sets out the forms submission by electronic means can take, such as attachment to an email.

124. Subsections (3) and (4) of this section make similar provision for the Register of Sasines, amending the 1868 Act. Subsection (4)(a) removes the existing reference to electronic documents to allow section 6A of the 1868 Act, as amended by subsection (4) (b) of this section, to apply to copies of deeds transmitted electronically. Inserted section 6A(6) sets out that a copy of a deed submitted electronically is sufficient to allow recording in the Register of Sasines to proceed. Inserted section 6A(7) provides that this applies when the means and form for electronic submission of copy deeds are specified as acceptable on the Keeper's website ([www.ros.gov.uk](http://www.ros.gov.uk)). Inserted section 6A(8) sets out the forms submission by electronic means can take.

### ***Section 34: Register of Inhibitions: electronic signature of documents***

125. This section relates to the Register of Inhibitions and makes provision for registration or recording in that register to proceed on the basis of electronic submission of documents and copies of documents to the Keeper of the Registers, inserting a new section 148A into the Bankruptcy and Diligence etc. (Scotland) Act 2007.
126. [Section 148A\(1\)](#) sets out that this provision applies to any document which is required or permitted to be registered with the Keeper in the Register of Inhibitions.
127. [Section 148A\(2\)](#) provides that documents may be signed by way of a basic electronic signature in order to be registered in the Register, including a version of an electronic signature which is reproduced on a paper document.
128. [Section 148\(3\)](#) and (4) provide that any legal requirement that a document be given to the Keeper in order to be registered or recorded in the Register may be fulfilled by transmitting it to the Keeper electronically, so long as the means and form for electronic submission are specified as acceptable on the Keeper's website ([www.ros.gov.uk](http://www.ros.gov.uk)).

## **Legal Aid and Advice and Assistance**

### ***Section 35: Claim for interim payment of fees and outlays***

129. This section makes provision for and about the making of interim payments in cases where legal fees and outlays are due to be paid out of the Legal Aid Fund ("the Fund") under the terms of the Legal Aid (Scotland) Act 1986. The section introduces a more flexible process for making interim payments in place of the temporary adjustments to existing rules which were provided for in paragraphs 21 to 23 of schedule 4 of the Coronavirus (Scotland) Act 2020.
130. Subsection (2)(a) modifies the existing duty to make payments out of the Fund so as to take account of the introduction of interim payments. Subsection (2)(b) similarly modifies the obligation for certain payments to be paid into the Fund: it requires any sums due by way of reimbursement of interim payments to be paid into the Fund.
131. Subsection (3)(a) modifies the provision that is made in section 33 of the 1986 Act about the ability to set fixed payments for work undertaken. As a general rule, because of the nature of a fixed payment, a solicitor who undertakes work for which a fixed payment is due will not be entitled to other payments from the Fund for that work. However, new subsection (3BA) ensures that this rule does not prevent the payment of an interim payment.
132. Subsection (3)(c) provides that any sum paid by way of interim payment is to be deducted from the final amount paid (so as to avoid double payment).

*These notes relate to the Coronavirus (Recovery and Reform) (Scotland)  
Act 2022 (asp 8) which received Royal Assent on 10 August 2022*

133. Subsection (4) inserts two new sections into the 1986 Act: new section 33ZB and new section 33ZC.
134. New section 33ZB provides for interim payments. It provides as follows—
- A claim for such a payment can be made by a solicitor who is providing advice and assistance or legal aid and by an advocate who is providing legal aid.
  - A claim must include a declaration that the sum being sought does not exceed the total sum the person expects to be paid from the Fund for their work.
  - Where a claim for an interim payment is made, it must be granted, unless the Legal Aid Board considers that the sum sought is likely to exceed the total sum it would expect to pay the person for their work.
  - In assessing the total sum that is expected to be paid for the person's work, the fact that the interim payment being sought will, if paid, in due course be deducted from the total sum (to avoid double payment) is not to be taken into consideration. However, any previously claimed interim payment would be deducted for the purposes of assessing the total sum that is expected to be paid for the work. The assessment is essentially looking at how much more the Legal Aid Board expects to pay the person than has already been paid.
135. New section 33ZC provides for the repayment of interim payments which prove to have been overpayments. This applies where the solicitor or counsel in question subsequently stops providing legal aid or advice and assistance to the person concerned (whether that is because the matter in relation to which it was being provided is at an end, the lawyer has withdrawn from acting, or for any other reason), and the total sum actually due to the solicitor or counsel is less than the total sum which was assumed would be due at the time of applying for the interim payment. The section provides as follows—
- The solicitor or counsel in question is required to pay the Legal Aid Board a sum equal to the amount by which the interim payment exceeds the total sum that is due for the work.
  - For these purposes, the total sum that is due for the work is assessed without reference to the fact that interim payments have already been made: the comparison is between the total amount that would have been due had no interim payments been made, and the amount that was paid out as interim payments.
  - Where the interim payment was, at the solicitor's request, paid to their firm rather than being paid to them personally, the firm is jointly and severally liable for the repayment due by that solicitor.
  - Where a firm is jointly and severally liable for a repayment and a separate sum is due to be paid to that firm, the Legal Aid Board is entitled to offset all or part of the repayment that is due to the Board.
  - The recovery mechanisms provided for by the section are in addition to, and do not limit, the use of any other recovery mechanisms that are available under the general law (for example, under the law of unjustified enrichment).
136. Subsection (5) revokes regulation 11 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. That regulation also allowed for interim claims for payment to be made pending the completion of legal proceedings. The new scheme for interim payments means regulation 11 is no longer required.



## **Freedom of information**

### ***Section 36: Freedom of information: giving notice electronically***

137. This section amends section 74(1)(a) of the Freedom of Information (Scotland) Act 2002 so that formal notices under that Act may be given electronically, as well as being delivered in person or posted. This makes permanent the temporary modification of the 2002 Act which was made by paragraph 7 of schedule 6 of the Coronavirus (Scotland) Act 2020.

## **Mental health**

### ***Section 37: Mental health: removal of need for witnessing of signature of nominated person***

138. Section 250(2A) of the Mental Health (Care and Treatment) (Scotland) Act 2003 provides that the nomination of a named person is only valid if a docket to the nomination states that the person nominated has consented to the nomination, the docket is signed by the nominated person, and the nominated person's signature is witnessed by a "prescribed person" (an independent advocate; medical practitioner; arts therapist, dietician, occupational therapist, physiotherapist, practitioner psychologist and speech and language therapist; person employed in the provision of, or managing the provision of, a care service; registered nurse; social worker; and solicitor) when they agree to become a named person.
139. **Section 37** of this Act amends section 250(2A) of the 2003 Act so that the nominated person's signature will no longer require to be witnessed by a prescribed person. This replicates permanently the temporary modification made by paragraph 15 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020.

## **Care services**

### ***Section 38: Care services: giving of notices by SCSWIS***

140. Section 101 of the Public Services Reform (Scotland) Act 2010 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 to do so under that Act.
141. **Section 38** of this Act amends the law on giving notice by "personal service" in relation to corporate bodies, and on giving notice electronically, making permanent the temporary modification of the Public Services Reform (Scotland) Act 2010 which was made by paragraph 5 of schedule 4 of the Coronavirus (Scotland) (No.2) Act 2020.
142. The new section 101(1)(a)(ii) and (2) of the Public Services Reform (Scotland) Act 2010 enable 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. Section 101(1)(c) 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.
143. **Section 101(3)** and (4) set out the practicalities of giving notice by post or electronic means to care service providers and those seeking to provide a care service, including when receipt of those notices is deemed to have taken place.
144. **Section 101(4)** provides further detail in relation to notices given by the Care Inspectorate by electronic means. Notices under this provision may be given when a person has indicated to the Care Inspectorate that it is willing to receive them in this way. An indication of a person's willingness may be specific to the notice in question

or more generally applicable to notices or other documents of that kind. Willingness may be communicated directly to the Care Inspectorate or expressed more generally on a website or by some other similar expression. Unless a person has indicated otherwise, willingness to receive a notice by electronic means may also be inferred from a person's previous willingness to receive notices or documents in this way. Electronic transmission may also take place where a notice has been uploaded to an electronic storage system from which the person is able to download the notice and that person is sent a notification informing them that a notice has been uploaded in this way.

## **Requirements of writing**

### ***Section 39: Disapplication of physical presence requirements***

145. This section enables lawyers to carry out certain formal processes remotely. Specifically, it removes any legal requirement for a lawyer to be physically present in order to witness someone signing a document or to take someone's oath or to receive their affirmation or declaration and it removes any legal requirement for a lawyer who is signing a document to do so in the physical presence of another person.

## **Custody at police stations**

### ***Section 40: Custody officers' functions***

146. This section allows prisoner custody officers and police custody and security officers to have custody of a person who is appearing before a court virtually from a police station.
147. Once a person has been charged by the police (or arrested by police on a warrant requiring them to be brought before a court), if the person is to remain in custody, the person has to appear before a court as soon as possible. Before there was the possibility of having someone appear before a court remotely, prisoners would be taken to a court building by the police or by prisoner custody officers (a role created by the Criminal Justice and Public Order Act 1994). In court, they would usually be in the custody of prisoner custody officers. Prisoners in a court building could also be kept in the custody of police custody and security officers (a role first created by the Criminal Justice (Scotland) Act 2003, but which now has its legal basis in the Police and Fire Reform (Scotland) Act 2012).
148. The legislation giving prisoner custody officers and police custody and security officers the power to hold people in their custody while appearing before a court was framed so that they could only exercise the power in a court building. Therefore they could not hold in their custody arrestees appearing before a court from a police station via a TV link. Subsections (2)(a) and (4) of section 40 extend the powers of prisoner custody officers and police custody and security officers (respectively), so that they can.
149. Subsection (2)(b) makes a consequential adjustment so that a prisoner custody officer in a police station has the same duty to give effect to an order from a court under section 212 of the Criminal Procedure (Scotland) Act 1995 as the officer would in a court building. An order under that section is an order a court can make having imposed a fine on a person. It is an order to an official to search the person for money that can be used to pay the fine.
150. Subsection (6) makes a consequential adjustment to the definition of "police custody" in Part 1 of the Criminal Justice (Scotland) Act 2016. Being in police custody (as defined) has various consequences under Part 1 of the Criminal Justice Act. Being transferred into the custody of someone who is not a police constable or a police custody and security officer is one way that someone who has been arrested can stop being in police custody. Being transferred into the custody of a prisoner custody officer is therefore one way that a person can stop being in police custody. Subsection (3) adjusts the definition so that a person who is transferred into the custody of a prisoner custody officer while at a police station is not treated as having left police custody at that point.

151. Subsection (8) makes a connected adjustment to section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. That section sets out circumstances in which an investigation into a death has to be carried out because the person died in custody. One of the circumstances in which an investigation must be carried out is when a person has died in “police custody” as defined for the purposes of Part 1 of the Criminal Justice (Scotland) Act 2016. Under that Act, a person ceases to be in “police custody” once the person has been brought before a court. With the advent of virtual court appearances, it is now possible for a person to be simultaneously in custody at a police station and before a court, so for the Fatal Accidents Act’s purposes having the obligation to investigate end the moment the person is brought before a court would be premature.
152. [Section 40\(8\)](#) of this Act therefore amends the Fatal Accidents Act so that the obligation to investigate persists so long as a person is in custody at a police station, even if a virtual court appearance means the person is no longer in “police custody” as defined for the Criminal Justice Act’s purposes.

## **Parole Board for Scotland**

### ***Section 41: Chairperson’s functions***

153. Legislation gives the chairperson of the Parole Board for Scotland certain powers and duties. Circumstances may arise in which the chairperson is temporarily unable to fulfil the functions of the office (due to illness, for example) or the office of chairperson may become temporarily vacant (for example in the event of the office holder’s death).
154. [Section 41](#) enables, and indeed creates a requirement for, the chairperson to produce a scheme setting out which other member, or members, of the Parole Board can exercise the chairperson’s functions in the event that the chairperson cannot or there is no chairperson. Section 41 also allows the chairperson to delegate functions of the office to other members of the Parole Board at times when the chairperson is available to exercise them.

## **Children’s hearings**

### ***Section 42: Members of children’s hearings***

155. This section modifies the duty that section 6(3) of the Children’s Hearings (Scotland) Act 2011 imposes on the National Convener of Children’s Hearings Scotland to ensure that every children’s hearing includes both a male and female member. It qualifies the duty to allow for its not being practicable in every case for a hearing to have both a male and female member.