

# **CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020**

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## **EXPLANATORY NOTES**

### **DETAIL ABOUT PROVISIONS**

#### *Schedule 2: Operation of the justice system*

##### **Criminal proceedings: extension of time limits**

77. Paragraph 1 of schedule 2 makes provision to extend certain statutory time limits contained in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) relating to criminal proceedings.
78. Paragraph 1(2) amends section 145 of the 1995 Act which provides the court with a power to adjourn a summary case at first calling for inquiry into the case, or for any other cause it considers reasonable for such period as it considers appropriate. It removes subsection 145(3) which provides that, where the accused has been remanded on bail or ordained to appear, no single period of adjournment shall exceed 28 days. The effect of this is that the court can adjourn a hearing of such a case for such a period as the court considers appropriate, without this limitation.
79. Paragraph 1(3) amends section 145A of the 1995 Act, which provides the court with a power to adjourn a case at first calling in a summary case where the accused is not present, to allow the accused to appear in answer to the complaint, or time for inquiry into the case, or for any other cause the court considers reasonable. It removes section 145A(3) which provides that no single period of adjournment shall exceed 28 days. The effect of this is that the court can adjourn a hearing of such a case for such a period as the court considers appropriate, without this limitation.
80. Paragraph 1(4) amends section 200 of the 1995 Act, which provides the court with a power to adjourn a case where an accused person has been found to have committed an offence punishable by imprisonment to enable inquiry to be made into their physical or mental condition to assist in determining the most appropriate means of dealing with them.
81. Paragraph 1(4)(a) amends section 200(2) to remove the three week limit for which any single adjournment can be made. The effect of this is that the court can adjourn the case for such a period as the court thinks necessary to enable a medical examination and report to be made.
82. Paragraph 1(4)(b) amends section 200(3)(a) to remove the three week limit for which any single adjournment can be made in a case where the court is of the opinion, on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder and that the person ought to continue to be committed to hospital for the purpose of inquiry into their mental condition following the expiry of the period specified in an order for committal to hospital under section 200(2)(b). The effect of this is that the court can adjourn the case for such a further period as the court thinks necessary to enable a medical examination and report to be made.

83. Paragraph 1(5) amends section 245J of the 1995 Act, which provides the court with a power to adjourn a case where an offender appears to have failed to comply with a requirement of a community payback order, drug testing and treatment order or restriction of liberty order for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with them, by substituting a new subsection (3), which provides that the court may adjourn a hearing under section 245J(1) for such period as it considers appropriate. This temporarily replaces the existing power to adjourn a case for 4 weeks at a time, or 8 weeks on cause shown.

### **Arrangements for the custody of persons detained at police stations**

84. Paragraph 2(1) allows the Scottish Ministers to make arrangements for the functions set out in sub-paragraph (2) to be performed by prisoner custody officers with escort functions.
85. The functions in sub-paragraph (2) are the transfer and custody of prisoners in police stations in connection with appearances before the court by electronic means, and administrative functions connected with such appearances. Arrangements made under sub-paragraph (1) could therefore allow prisoner custody officers to be responsible for the custody of prisoners in police stations before, during or after their appearance before the court, so long as those functions are exercised in connection with the appearance of the prisoner before the court by electronic means. The arrangements could also allow prisoner custody officers to administer court papers and manage timetables for hearings.
86. Sub-paragraph (3) provides that the arrangements made by the Scottish Ministers may include entering into contracts with other persons for the provision of prisoner custody officers.
87. Paragraph 3 applies the relevant provisions of the Criminal Justice and Public Order Act 1994 and the Prisons and Young Offenders Institutions (Scotland) Rules 2011 ([S.S.I. 2011/331](#)), to the arrangements made under paragraph 2 as they apply to prisoner escort arrangements made under section 102(1) of the 1994 Act. It means, for example, that whenever a prisoner custody officer is responsible for the custody of a prisoner by virtue of arrangements made under paragraph 2, they have the powers and duties under section 104 of the 1994 Act in relation to that prisoner.
88. Paragraph 4 provides that a prisoner is not to be regarded as having been transferred out of police custody for the purposes of section 64(2)(cb) of the Criminal Justice (Scotland) Act 2016 where functions are performed in police stations by prisoner custody officers prior to the prisoner being brought before the court. The application of section 64 is otherwise unaffected, meaning that police custody ends when the prisoner appears before the court by electronic means.

### **Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016**

89. Paragraph 6 makes provision which enables the court to prevent the expiry of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) when certain conditions are met.
90. Paragraph 6(2) makes a consequential amendment to section 29(1)(a) of the 2016 Act by introducing reference to new section 29A.
91. Paragraph 6(3) inserts a new section 29A into the 2016 Act, which deals with expiry of undertakings. The new section 29A enables the court to modify the terms of an undertaking given under section 25(2)(a) of the 2016 Act by changing the time at which the person who gave the undertaking is to appear at court where certain conditions are met, as set out in subsection (1). Where the court exercises this power, this has the effect of the undertaking and any conditions attached to it continuing until the newly specified time at which the person is to appear at court.

92. Those conditions are:
- the person has failed to appear at court as required by the terms of the undertaking,
  - the court considers that the failure to appear is attributable to a reason related to coronavirus, and
  - the court does not consider it appropriate to grant a warrant for the person’s arrest on account of the failure to appear.
93. Subsection (2) requires the procurator fiscal to give notice, as soon as reasonably practicable, to the person who gave the undertaking that the terms of the undertaking have been modified, where the court makes such an order under subsection (1).
94. Subsection (3) prescribes the manner in which notice under subsection (2) must be effected and provides that the same requirements as in section 141 of the Criminal Procedure (Scotland) Act 1995 apply. This includes delivering the notice personally or leaving it at the person’s home.
95. Subsection (4) provides that the references in subsection (1) to the terms of the undertaking include those modified by the procurator fiscal under section 27(1).
96. Subsection (5) provides that a reference in any enactment to the modification of the terms of an undertaking made by the procurator fiscal under section 27(1) is to be treated as including modification by the court under subsection (1).
97. Fixed penalty notices under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020
98. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020<sup>1</sup>[1] (“the Health Protection Regulations”) create a number of criminal offences for the purpose of responding to the threat to public health posed by the incidence and spread of coronavirus in Scotland. Under Regulation 9 a police officer may issue a fixed penalty notice (“an FPN”) to a person where the officer reasonably believes that the person:
- has committed an offence under the Regulations, and
  - is aged 16 years or over.
99. Paragraph 7 of schedule 2 amends regulation 9 of the Health Protection Regulations to change the age to 18.
100. As a consequence, a police officer will only be able to issue an FPN under those Regulations where the officer reasonably believes that the person is aged 18 or over.

### **Proceeds of crime: extension of permitted period for purpose of confiscation order**

101. Paragraph 8 inserts a new subsection (4A) in section 99 (confiscation orders: postponement) of the Proceeds of Crime Act 2002 (“the 2002 Act”).
102. Subsection (4A) specifies that, for the purposes of section 99(4) of the 2002 Act, “exceptional circumstances” includes the effect (whether direct or indirect) of coronavirus on the proceedings.

### **Proceeds of crime: time limits for payment of confiscation orders**

103. Paragraph 9 makes provision in relation to the time limits for payment of confiscation orders as set out in section 116 of the 2002 Act.

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<sup>1</sup> <http://www.legislation.gov.uk/ssi/2020/103/regulation/9>

104. Paragraph 9(2)(c) inserts new subsections (5A) and (5B) into section 116. When an application is made under section 116(4) to extend the specified period within which the sums due under the confiscation order must be paid, that extended period must not exceed twelve months from the day on which the confiscation order was made. New subsections (5A) and (5B), provide that, where the accused is unable to pay for a reason relating to coronavirus, the court may order that the extended period continue until such day as the court considers appropriate in the circumstances (i.e. the effect is that the twelve month restriction in section 116(5)(b) is disapplied).
105. Paragraph 9(2)(d) and (e) modify the effect of section 116(6) so that, where new subsection (5A) applies, an order under section 116(4) may be made after the end of the period of twelve months starting with the day on which the confiscation order is made (i.e. the effect is that the twelve month restriction in section 116(6)(b) is disapplied).
106. Paragraph 9(3) inserts a new section 116A to provide further time for payment due to coronavirus. New section 116A applies where the court has made an order under section 116(4) extending the specified period. It allows the accused to apply to the sheriff court for an order further extending the specified period. Where the court is satisfied that the accused is unable to pay for a reason relating to coronavirus, it may make an order further extending the specified period for such period as the court considers appropriate in the circumstances.
107. Paragraph 9 also makes provision in relation to the payment of interest on unpaid sums under a confiscation order, as set out in section 117 of the 2002 Act. Subsection (1) provides that interest must be paid on amounts required to be paid under a confiscation order if those amounts are not paid when they are required to be paid. Subsection (3) sets out circumstances where no amount is required to be paid for the purposes of section 117 (and so interest does not accrue).
108. Paragraph 9(4)(c) inserts new subsections (3A) and (3B) into section 117 to set out further circumstances where no amount is required to be paid. New subsection (3A) modifies section 117(3)(c) so that the twelve month restriction is disapplied where a section 116(4) application has been made on the basis of the accused's inability to pay for a reason relating to coronavirus. Subsection (3B) provides that no amount is required to be paid for the purposes of section 117 where an application has been made under new section 116A(2) for a further extension before the expiry of the period specified under section 116(4), and that application has not been determined by the court.

### **Replacement of requirement for intimation on walls of court, etc.**

109. Paragraph 10(2)(a) inserts a new paragraph 1A into Part 1 of schedule 4 of the 2020 Act. The effect of paragraph 1A(1) is that where there is provision requiring or permitting a document to be displayed on the walls (or any other part) of a court building, or to be made publicly available within a court, that is instead to be done by publication of the document on the Scottish Courts and Tribunals Service ("SCTS") website.
110. Paragraph 1A(2) confers a power on the Lord President or the Lord Justice General to direct that sub-paragraph (1) does not apply to a specified type of document.
111. Paragraph 1A(3)(a) provides that publication of a document on the SCTS website is to be done in accordance with any direction issued by the Lord President or the Lord Justice General. Paragraph 1A(4) makes it clear that any such direction may provide for a document to be made available in redacted form only.
112. Paragraph 1A(3)(b) ensures that any requirements pertaining to a document being displayed within a court building, such as specification of a time period for display, continue to apply to publication of the document on the SCTS website, subject to any necessary modifications.
113. Paragraph 1A(5) preserves the effect of provision for alternative method of publication, such as intimation by advertisement in a newspaper.

*These notes relate to the Coronavirus (Scotland) (No.2) Act  
2020 (asp 10) which received Royal Assent on 26 May 2020*

114. Paragraph 10(2)(b) modifies paragraph 5 of schedule 4 of the 2020 Act so as to require that any direction made under new paragraph 1A(2) or (3)(a) be made public.