

Status: Point in time view as at 27/05/2020.

Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) (No.2) Act 2020, SCHEDULE 2. (See end of Document for details)

SCHEDULE 2

(introduced by section 3)

OPERATION OF THE JUSTICE SYSTEM

PART 1

CRIMINAL JUSTICE

Criminal proceedings: extension of time limits

- 1 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modifications in this paragraph.
- (2) Section 145 (adjournment for inquiry at first calling) has effect as if—
- (a) in subsection (1), for “subsections (2) and (3)” there were substituted “subsection (2)”,
 - (b) subsection (3) were repealed.
- (3) Section 145A (adjournment at first calling to allow accused to appear etc.) has effect as if—
- (a) in subsection (1), for “subsections (2) and (3)” there were substituted “subsection (2)”,
 - (b) subsection (3) were repealed.
- (4) Section 200 (remand for inquiry into physical or mental condition) has effect as if—
- (a) in subsection (2), in the closing text, the words “, no single period exceeding three weeks,” were repealed,
 - (b) in subsection (3)(a), the words “not exceeding three weeks” were repealed.
- (5) Section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.) has effect as if for subsection (3) there were substituted—
- “(3) The court may adjourn a hearing under subsection (1) for such period as it considers appropriate.”.

Arrangements for the custody of persons detained at police stations

- 2 (1) The Scottish Ministers may make arrangements for functions within sub-paragraph (2) to be performed in such cases as may be determined by or under the arrangements by prisoner custody officers with escort functions.
- (2) Those functions are—
- (a) functions of the transfer or custody of prisoners in police stations which are in connection with appearances by those prisoners before courts by electronic means,
 - (b) functions of an administrative character in connection with the appearance of prisoners in police stations before courts by electronic means.
- (3) Arrangements made by the Scottish Ministers under this paragraph may include entering into contracts with other persons for the provision by them of prisoner custody officers.
- (4) For the purposes of this paragraph—

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- (a) a prisoner custody officer with escort functions is a person in respect of whom a certificate under section 114 of the 1994 Act (prisoner custody officers: general functions) is for the time being in force which certifies that the person has been approved by the Scottish Ministers for the purpose of performing—
 - (i) escort functions, or
 - (ii) both escort functions and custodial duties,
 - (b) a reference to appearing before a court by electronic means is a reference to appearing before a court by electronic means by virtue of—
 - (i) Part 1 of schedule 4 of the Coronavirus (Scotland) Act 2020, or
 - (ii) any other enactment allowing or requiring appearances before a court to be made by electronic means.
- 3 (1) The provisions of the 1994 Act specified in sub-paragraph (2) apply in relation to arrangements made under paragraph 2 as they apply in relation to prisoner escort arrangements and, accordingly, references in those provisions to prisoner escort arrangements are to be read as including references to arrangements made under that paragraph.
- (2) Those provisions are—
- (a) section 103 (monitoring of prisoner escort arrangements),
 - (b) section 104 (powers and duties of prisoner custody officers performing escort functions),
 - (c) section 105 (breaches of discipline by prisoners under escort),
 - (d) paragraph 3 of schedule 6 (suspension of certificates), and
 - (e) section 115 (wrongful disclosure of information).
- (3) The references in paragraphs 3 and 4 of schedule 6 of the 1994 Act to escort functions are to be read as including functions within paragraph 2(2).
- (4) The reference in paragraph (a)(i) of rule 5 (suspension of a certificate of a prisoner custody officer) of the Prison Rules to prisoner escort arrangements is to be read as including arrangements made under paragraph 2.
- (5) The reference in paragraph (b) of rule 5 of the Prison Rules to the functions set out in section 102(2) of the 1994 Act is to be read as including functions within paragraph 2(2).
- 4 Where functions are performed by a prisoner custody officer by virtue of paragraph 2 prior to the prisoner being brought before the court, the 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.
- 5 In paragraphs 2 to 4—
- “the 1994 Act” means the Criminal Justice and Public Order Act 1994,
 - “the Prison Rules” means the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (S.S.I. 2011/331),
 - “prisoner” means any person who is in legal custody or is deemed to be in legal custody under section 295 of the Criminal Procedure (Scotland) Act 1995.

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

- 6 (1) The Criminal Justice (Scotland) Act 2016 applies in accordance with the modifications in this paragraph.
- (2) Section 29 (expiry of undertaking) has effect as if in subsection (1)(a), after “court” there were inserted “ (but see section 29A) ”.
- (3) The Act has effect as if after section 29 there were inserted—

“29A Expiry of undertaking: coronavirus-related reason for non-appearance

- (1) A court may modify the terms of an undertaking given under section 25(2) (a) by changing the time at which the person who gave it is to appear at the court if—
- (a) the person has failed to appear at court as required by the terms of the undertaking,
 - (b) the court considers that the failure to appear is attributable to a reason relating to coronavirus, and
 - (c) the court does not consider it appropriate to grant a warrant for the person's arrest on account of the failure to appear.
- (2) Where a court modifies the terms of an undertaking under subsection (1), the procurator fiscal must give notice of the modification to the person who gave the undertaking as soon as reasonably practicable.
- (3) Notice under subsection (2) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.
- (4) The reference in subsection (1) to the terms of an undertaking are to the terms of the undertaking subject to any modification by notice under section 27(1).
- (5) A reference in any enactment to the modification of the terms of an undertaking under section 27(1) is to be treated as including modification under subsection (1).
- (6) In subsection (1)(b), “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.”.

*Fixed penalty notices under the Health Protection
(Coronavirus) (Restrictions) (Scotland) Regulations 2020*

- 7 (1) The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (S.S.I. 2020/103) are amended by this paragraph.
- (2) In regulation 9(1)(b), for “16” substitute “ 18 ”.

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PART 2

PROCEEDS OF CRIME

Extension of permitted period for purpose of confiscation order

- 8 (1) The Proceeds of Crime Act 2002 applies in accordance with the modifications in this paragraph.
- (2) Section 99 (postponement) has effect as if—
- (a) after subsection (4) there were inserted—
- “(4A) For the purposes of subsection (4), “exceptional circumstances”, in relation to proceedings, includes the effect (whether direct or indirect) of coronavirus on the proceedings.”,
- (b) after subsection (11) there were inserted—
- “(12) In subsection (4A), “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.”.

Time limits for payment of confiscation orders

- 9 (1) The Proceeds of Crime Act 2002 applies in accordance with the modifications in this paragraph.
- (2) Section 116 (time for payment) has effect as if—
- (a) in subsection (1)—
- (i) the existing words “the following provisions of this section” were paragraph (a),
- (ii) after that paragraph there were inserted “, and
- (b) section 116A.”,
- (b) in subsection (5)(b), after “12 months” there were inserted “ unless subsection (5A) applies ”,
- (c) after subsection (5) there were inserted—
- “(5A) This subsection applies if the court making the order under subsection (4) is satisfied that the accused is, for a reason relating to coronavirus, unable to pay the amount ordered to be paid under the confiscation order within the period of 12 months beginning with the day on which the confiscation order is made.
- (5B) Where subsection (5A) applies, the extended period may continue until such day as the court considers appropriate in the circumstances.”,
- (d) in subsection (6)(b) after “made”, in the second place where it occurs, there were inserted “ unless subsection (5A) applies (see subsection (6A)) ”,
- (e) after subsection (6) there were inserted—
- “(6A) Where subsection (5A) applies, subsection (6) applies as if the words from “but” to the end of the subsection were omitted.”,
- (f) after subsection (7) there were inserted—

Status: Point in time view as at 27/05/2020.

Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) (No.2) Act 2020, SCHEDULE 2. (See end of Document for details)

“(8) In this section and sections 116A and 117, “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.”.

(3) The Act has effect as if after section 116 there were inserted—

“116A Further time for payment due to coronavirus

- (1) Where a court has made an order under section 116(4) extending the specified period relating to a confiscation order (“the extended period”), the accused may apply to the sheriff court for an order further extending the specified period.
- (2) The accused may make an application under subsection (1)—
 - (a) before the expiry of the extended period, or
 - (b) after the expiry of the extended period if—
 - (i) the extended period expired during the period beginning with 1 March 2020 and ending on the day before the commencement day, or
 - (ii) the extended period expired on or after the commencement day and the accused was unable to make an application under subsection (1) before the expiry of the extended period for a reason relating to coronavirus.
- (3) Where an application is made under subsection (1) after the expiry of the extended period, the application must be made—
 - (a) where the condition set out in subsection (2)(b)(i) is met, as soon as is reasonably practicable after the commencement day,
 - (b) where the conditions set out in subsection (2)(b)(ii) are met, as soon as is reasonably practicable after the expiry of the extended period.
- (4) If, following receipt of an application under subsection (1), the court is satisfied that the accused is or (as the case may be) was unable to pay the amount ordered to be paid under the confiscation order before the expiry of the extended period for a reason relating to coronavirus, the court may make an order further extending the specified period relating to the confiscation order (“the further extended period”).
- (5) The further extended period—
 - (a) must start with the day on which the confiscation order is made, and
 - (b) may continue until such day as the court considers appropriate in the circumstances.
- (6) The court must not make an order under subsection (4) unless it gives the prosecutor an opportunity to make representations.
- (7) Subsection (8) applies where an application is made under subsection (1) after the expiry of the extended period and the court makes an order under subsection (4) following receipt of the application.
- (8) The order under subsection (4) is to be treated for the purposes of sections 116 and 117 as if it were made by the court immediately before the expiry of the extended period.

Status: Point in time view as at 27/05/2020.

Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) (No.2) Act 2020, SCHEDULE 2. (See end of Document for details)

(9) In this section—

“commencement day” means the day on which paragraph 9 of schedule 2 of the Coronavirus (Scotland) (No.2) Act 2020 comes into force,
“specified period”, in relation to a confiscation order, means the period specified under section 116(2) within which the amount ordered to be paid under the confiscation order must be paid.”

(4) Section 117 (interest on unpaid sums) has effect as if—

- (a) in subsection (1), after “section 116” there were inserted “ (or within such a period as extended under section 116A) ”,
- (b) in subsection (3)(c), after “ended” there were inserted “ (but see subsection (3A)) ”,
- (c) after subsection (3) there were inserted—

“(3A) Subsection (3)(c) does not apply to an application made under subsection (4) of section 116 where the accused invites the court to make a finding as mentioned in subsection (5A) of that section in the context of making an order under subsection (4) of that section.

(3B) For the purposes of this section, no amount is required to be paid under a confiscation order if—

- (a) an application has been made under section 116A(1) in relation to the confiscation order before the expiry of the period specified under section 116(4) in respect of the order, and
- (b) the application has not been determined by the court.”

PART 3

INTIMATION, ETC. OF DOCUMENTS

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

- 10 (1) The Coronavirus (Scotland) Act 2020 is amended by this paragraph.
- (2) In schedule 4 (justice)—
- (a) after paragraph 1 insert—

Intimation, etc. on Scottish Courts and Tribunals Service website

“1A (1) Any requirement (however expressed) that a document—

- (a) be put on the walls, doors or any other part of a court building (whether internal or external), or
- (b) be made publicly available in any other way within a court building,

is to be fulfilled instead by the document's being made publicly available through the Scottish Courts and Tribunals Service website.

(2) But sub-paragraph (1) does not apply to a document if it is of a type that—

- (a) the Lord President of the Court of Session, or

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Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) (No.2) Act 2020, SCHEDULE 2. (See end of Document for details)

- (b) the Lord Justice General,
has directed that sub-paragraph (1) does not apply to.
- (3) Where a document is to be made publicly available through the Scottish Courts and Tribunals Service website by virtue of this paragraph, it is to so be made available in accordance with—
- (a) any direction issued by—
- (i) the Lord President of the Court of Session, or
- (ii) the Lord Justice General, and
- (b) (subject to any necessary modifications) any enactment about—
- (i) how a step mentioned in paragraph (a) or (b) of sub-paragraph (1) is to be taken in relation to the document, or
- (ii) the length of time for which the document is to be made publicly available in a way described by those paragraphs.
- (4) A direction under sub-paragraph (3)(a) may, in particular, provide that a document is to be made available only in a redacted form.
- (5) If an enactment provides for an alternative to taking a step mentioned in paragraph (a) or (b) of sub-paragraph (1) as a means of achieving an outcome (for example, advertising an application in a newspaper as a means of intimating it), nothing in this paragraph precludes the taking of that alternative step to achieve the outcome.
- (6) In this paragraph, “the Scottish Courts and Tribunals Service website” means the website maintained by, or on behalf of, the Service with the internet domain name *scotcourts.gov.uk*.”
- (b) in paragraph 5, after paragraph (a) insert—
- “(aa) a direction under paragraph 1A(2) or (3)(a).”

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