

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 7 - Other measures in response to coronavirus

Social security

252. Paragraphs 1 to 5 of schedule 7 make provision to modify, and modify the effect of, certain provisions of the Social Security (Scotland) Act 2018 (“the 2018 Act”) that relate to statutory timescales that are likely to be affected by the coronavirus.
253. Paragraph 2 modifies section 41 of the 2018 Act, which provides for the right to request re-determination of a decision made by Social Security Scotland. Section 41(2) provides that a request for a re-determination is valid only where certain conditions are satisfied, and subsection (4) of that section sets out the condition that the request must be made within specified timescales.
254. Paragraph 3 modifies section 48 of the 2018 Act, which provides the statutory timescales for bringing an appeal under section 46 of that Act against a determination made by the Scottish Ministers, so that they are also to be read with new section 52A.
255. Paragraph 4 inserts two new sections into the 2018 Act. Those are section 52A (re-determination and appeal deadlines) and section 52B (applications for assistance).
256. New section 52A(1) provides that where a person has requested a re-determination after the deadline set out in regulations under section 41 of the 2018 Act the request will be valid, even if received after the end of the period of a year after the day on which the individual was informed of the original determination, where it is considered that the request was made late for a good reason that is related to coronavirus.
257. New section 52A(2) provides that an appeal may be brought under section 46 of the 2018 Act at any time after the expiry of the 31 day period set out in section 48(2) (a), including after the deadline of one year set out in section 48(1)(c), if the First-tier Tribunal gives permission on the basis that there is a good reason for the application not being made sooner which is related to coronavirus.
258. New section 52A(3) provides that any provision of the Scottish Tribunal Rules that would have the effect of precluding an appeal from being brought under section 52A(2) (for example any time limit for giving a notice of appeal) is to be disregarded to the extent it would have that effect.
259. New section 52B applies in respect of any provisions in regulations made under Chapter 2 of the 2018 Act that make a person’s eligibility for assistance conditional on their application being made by a particular time or ahead of a certain event. In accordance with subsection (2), the person who is determining the applicant’s eligibility may treat the application as having been made by the required timescale if the person is satisfied that the reason for the application not being made ahead of the deadline or event is related to coronavirus.

260. Section 52B(3) makes clear the relaxation on the requirements described above includes those that set out that entitlement to assistance is conditional on a person's age at the time of making an application. That means that where an individual is unable due to the impact of coronavirus to apply for assistance at a time when they satisfy the age-related requirement (e.g. the requirement to be aged under the age of 19 on the day an application for Young Carer Grant is made) they will be entitled to apply late and have their entitlement determined as though the application had been made when those age-related requirements were satisfied.
261. Paragraph 5 modifies section 43 of the 2018 Act in two ways. Subsection (2) is modified so as to read "...the determination as soon as reasonably practicable." A new subsection (5A) is also inserted. Section 43 sets out a duty to re-determine applications where this is requested by the individual, and subsection (5) of that section provides that the period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations. The effect of the modification made by paragraph 5 is that the periods prescribed in those regulations are to be read as though extended by 9 weeks. This has the effect of giving Social Security Scotland longer to make a re-determination as a result of disruption caused by the Coronavirus.

Irritancy clauses in commercial leases

262. Section 4 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 provides that a landlord must give a tenant at least 14 days' notice before terminating a commercial lease due to non-payment of rent. Paragraph 7 of schedule 7 provides that section 4 of the 1985 Act has effect as if this period is 14 weeks. This will mean that landlords will have to give at least 14 weeks' notice to tenants before being able to terminate a commercial lease for non-payment of rent by the tenant.
263. The provisions enable the Scottish Ministers to alter the new 14 week period by regulations. They also make it clear that the new 14 week period applies irrespective of whether a notice has already been served (provided the 14 day period has not already expired) and irrespective of whether the circumstance which would entitle the landlord to terminate the lease already exist.

Duration of planning permission

264. Paragraph 9 of schedule 7 provides that section 58 of the Town and Country Planning (Scotland) Act 1997 is to have effect as if new subsections (3B) to (3E) were inserted into it. In terms of section 58(1) and (2) planning permission lapses if development is not begun by the end of a specified period, usually of 3 years, from the date of the grant of planning permission. Subsection (3B) has the effect that if a planning permission would under the normal rules under subsection (1) or (2) lapse during the "emergency period" then the period within which development is to be commenced is extended. Subsection (3C) defines the "emergency period" as the period of 6 months after the provision comes into force. This means that a planning permission due to expire within the emergency period would instead lapse at the end of the extended period unless development has already commenced. Subsection (3C) also defines the "extended period" as the period of 12 months beginning with the date on which the provisions come into force. Subsections (3D) and (3E) provide the Scottish Ministers with the power to amend those periods if required through regulations subject to the negative procedure.
265. Paragraph 10 makes equivalent provisions in respect of section 59 of the Town and Country Planning (Scotland) Act 1997 and planning permission in principle. It provides that section 59 has effect as if new subsections (8A) to (8E) were inserted. Development authorised by planning permission in principle cannot be begun until all the requisite approvals needed in accordance with conditions imposed on the grant of planning permission have been obtained. In terms of section 59(4) planning permission in principle lapses if development is not begun by the end of a specified period, usually of 2 years, from the date on which the last requisite approval is obtained. A different

period may be substituted by direction given under section 59(5). Subsection (8A) has equivalent effect in respect of planning permission in principle as new subsection (3B) has for other planning permissions. It means that if a planning permission in principle would lapse during the emergency period it would not under subsection (8A) lapse until at the end of the extended period if the development to which the permission relates had not begun.

266. New subsection (8B) provides for the situation where the last date by which an application for a requisite approval can be made is within the emergency period then that application can be made before the end of the extended period.
267. New subsections (8C), (8D) and (8E) define “emergency period” and “extended” period and provide the Scottish Ministers with the power to amend those periods if required through regulations subject to the negative procedure.

Land registration

268. Paragraphs 11 to 19 of schedule 7 of the Act relate to the Land Register and Register of Sasines, and make provision for (i) the protected period of advance notices impacted by the closure of the application record and Register of Sasines following the coronavirus outbreak to be extended, and (ii) registration in the Land Register and Register of Sasines to proceed on the basis of a copy of a traditional paper deed submitted to the Keeper of the Registers through electronic means.

Electronic delivery of copy of deed to Registers of Scotland

269. The paragraphs under this heading modify the Land Registration etc. (Scotland) Act 2012 and the Land Registers (Scotland) Act 1868 for the duration of the Act, 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 by electronic means.
270. Paragraphs 11 and 12 make provision for the Land Register, adjusting the effect of 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.
271. Paragraphs 13 and 14 make similar provision for the Register of Sasines, adjusting the effect of the 1868 Act. For the purposes of the Act, paragraph 14(a) removes reference to electronic documents to allow section 6A of the 1868 Act to apply to copies of deeds transmitted electronically. Paragraph 14(b) makes other temporary modifications as for the Land Register. 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. Inserted section 6A(8) sets out the forms submission by electronic means can take.

Period of Effect of Advance Notices

272. The paragraphs under this heading set out how the protected period provided by advance notices is extended for advance notices affected by the closure of the application record in the Land Register and Register of Sasines on 24th March 2020.
273. Paragraph 15 applies paragraph 16 to advance notices already entered in the application record and which still had effect on 24th March 2020.
274. Paragraph 16 sets out that the protected period provided by such an advance notice will be extended until 10 days after the day on which the application record fully re-opens (by a declaration of the Keeper to that effect).

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

275. Paragraph 17 applies paragraph 18 to advance notices already recorded in the Register of Sasines and which still had effect on 24th March 2020.
276. Paragraph 18 sets out that the protected period provided by such an advance notice will be extended until 10 days after the day on which the Register of Sasines fully re-opens.
277. Paragraph 19 makes clear that, while the Act applies, the 2012 Act is to be regarded as having been modified by the adjustments to section 58 of the 2012 Act so:
- the protected period for advance notices which had effect on a day the application record and Registers of Sasines are closed to the making of all entries is extended until the later of either the 35 day period provided for in section 58(1) or 10 days after the date on which the application record or Register of Sasines fully re-opens;
 - the protected period for advance notices entered onto the application record or recorded in the Register of Sasines during a period in which the application record and Register of Sasines is partially closed is extended until the later of either the 35 day period provided for in section 58(1) or 10 days after the date on which the application record or Register of Sasines fully re-opens.

Anatomy Act 1984

278. Paragraphs 20 to 22 of schedule 7 modify the Anatomy Act 1984 (“the 1984 Act”) to extend the periods for which a body or part of a body can be retained for the purpose of anatomical examination and enables such bodies or parts of bodies to be retained after examinations have been concluded. The 1984 Act is modified for the duration of this legislation to provide (a) that the statutory period in section 4B (lawful examinations: further provision) and the 3 year limit in section 5 (control of possession after examination) of the 1984 Act be extended until paragraph 20 ceases to have effect and (b) by dis-applying section 5(1)(b) of the 1984 Act to make it lawful to retain possession of a body or part of a body after the anatomical examination has concluded. The purpose of the modifications is to extend the 3 year time limit to ensure that during the period of the coronavirus pandemic, licence holders for example in university anatomy departments are not committing an offence by retaining a body beyond the statutory 3 years.
279. Paragraph 21 modifies section 4B (lawful examinations: further provision) of the 1984 Act by inserting a new subsection (3A) providing that should the statutory period expire during the period in which paragraph 21 of schedule 7 of the Act has effect the period will instead expire on the day that paragraph ceases to have effect.
280. Paragraph 22 modifies section 5 (control of possession after examination) of the 1984 Act by omitting subsection (1)(b) to remove the restriction on retaining bodies or parts of bodies after anatomical examinations have concluded and inserting a new subsection (1A) to provide that should the period referred to in section 5(1)(c)(iii) (length of time an imported body can be retained) elapse during the period when the Act has effect the period is to be treated as elapsing instead on the day on which paragraph 22 of schedule 7 ceases to have effect.

Scrutiny of subordinate legislation in urgent cases

281. Paragraphs 23 to 30 of schedule 7 allow subordinate legislation which is subject to the affirmative procedure to be instead made under a made affirmative procedure where necessary by reason of urgency.
282. Paragraph 25 dispenses with a number of possible requirements which would otherwise apply before making the subordinate legislation.
283. Paragraph 27 retains the requirement in affirmative procedure for a positive vote by the Scottish Parliament in respect of the subordinate legislation. Without a resolution

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

approving the subordinate legislation, it expires 28 days after it is made. Paragraph 28 sets out how that 28 day period should be calculated.

Business improvement districts

284. Paragraph 31 of schedule 7 extends the duration of certain business improvement district partnerships (BIDs) which operate to deliver local arrangements, as provided for by the Planning etc. (Scotland) Act 2006. That Act sets out a statutory process to initiate a BID, that requires a ballot of affected businesses within the BID area, following consultation on a BID proposal and business plan. BIDs can operate for a maximum of 5 years before a re-ballot.
285. The Act applies an extension to any BID that is in force when the paragraph comes into force and is due to end before 31 March 2021, unless that BID has already held a ballot that has approved its renewal: see subparagraphs (1) and (2). Subparagraph (3) provides that such arrangements are extended to 31 March 2021, including their funding arrangements. In certain circumstances a local authority or the BID partnership can terminate BID arrangements; that possibility is preserved by subparagraph (4).

Muirburn

286. Paragraphs 32 and 33 of schedule 7 modify section 23 of the Hill Farming Act 1946 in order to prevent muirburn taking place during the coronavirus outbreak. The Act suspends the muirburn season, as set out in section 23 of the 1946 Act, which normally runs from the 1st of October until the 15th of April.
287. The Act suspends the muirburn season during the relevant period. The relevant period is the period in which paragraphs 32 and 33 of schedule 7 of the Act (which modifies section 23 of the 1946 Act) are in force.