

*Status: Point in time view as at 07/04/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)*

## SCHEDULE 4

*(introduced by section 5)*

### JUSTICE

#### PART 1

#### COURTS AND TRIBUNALS: CONDUCT OF BUSINESS BY ELECTRONIC MEANS

##### *Electronic signatures and transmission of documents*

- 1 (1) An electronic signature fulfils any requirement (however expressed and for whatever purpose) that—
- (a) a document of a type mentioned in sub-paragraph (4), or
  - (b) a deletion or correction to such a document,
- be signed, initialled or signetted.
- (2) Any requirement (however expressed) that a document of a type mentioned in sub-paragraph (4) be given to a person may be fulfilled by—
- (a) transmitting it to the person electronically, or
  - (b) transmitting it (electronically or otherwise) to a solicitor engaged to act on the person's behalf in relation to the proceedings in question.
- (3) For the purposes of sub-paragraph (2)—
- (a) electronic transmission of a document by one person (“the sender”) to another person (“the recipient”) must be effected in a way that the recipient has indicated to the sender that the recipient is willing to receive the document,
  - (b) the recipient's indication of willingness to receive a document in a particular way may be—
    - (i) specific to the document in question or generally applicable to documents of that kind,
    - (ii) expressed specifically to the sender or generally (for example on a website),
    - (iii) inferred from the recipient having previously been willing to receive documents from the sender in that way and not having indicated unwillingness to do so again,
  - (c) the sender's uploading of a document to an electronic storage system from which the recipient is able to download the document may constitute electronic transmission of the document from the sender to the recipient.
- (4) The types of document referred to in sub-paragraphs (1) and (2) are (subject to sub-paragraph (5))—
- (a) an order, warrant, sentence, citation, minute or any other document produced by a court or tribunal,
  - (b) an extract of any document referred to in paragraph (a),
  - (c) any document that an enactment requires be given to a person in connection with, or in order to initiate, proceedings.

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- (5) A type of document mentioned in sub-paragraph (4) is not to be regarded as being mentioned in that sub-paragraph, for the purposes of sub-paragraph (1) or (2) (or both), if—
- (a) the Lord President of the Court of Session, or
  - (b) the Lord Justice General,
- directs that it is not.
- (6) A direction under sub-paragraph (5) may relate to some or all proceedings.
- (7) In this paragraph—
- (a) “court” includes any office holder of a court,
  - (b) “document” includes a copy of a document,
  - (c) “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document,
  - (d) references to giving a person a document include—
    - (i) serving a document on a person,
    - (ii) sending a document to a person, and
    - (iii) lodging a document with, or otherwise applying to or petitioning, a court or tribunal,
  - (e) “tribunal” includes any office holder of a tribunal.

*Suspension of requirements for physical attendance*

- 2 (1) Any requirement (however expressed) that a person physically attend a court or tribunal does not apply, unless the court or tribunal directs the person to attend physically.
- (2) But sub-paragraph (1) does not apply in relation to a trial diet.
- (3) In the case of such a diet, the court may disapply any requirement (however expressed) that a person physically attend the court by directing that the person need not do so.
- (4) A court or tribunal may issue a direction under sub-paragraph (1) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would—
- (a) prejudice the fairness of proceedings, or
  - (b) otherwise be contrary to the interests of justice.
- (5) A court may issue a direction under sub-paragraph (3) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would not—
- (a) prejudice the fairness of proceedings, or
  - (b) otherwise be contrary to the interests of justice.
- (6) A court or tribunal may issue or revoke a direction under sub-paragraph (1) or (3) on the motion of a party or of its own accord.
- (7) In considering whether to issue or revoke a direction under sub-paragraph (1) or (3), the court or tribunal must—
- (a) give all parties an opportunity to make representations, and

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- (b) have regard to any guidance issued by—
  - (i) the Lord President of the Court of Session, or
  - (ii) the Lord Justice General.
- (8) References in this paragraph to physically attending a court or tribunal are to—
  - (a) being in a particular place, or
  - (b) being in the same place as another person,for the purpose of any proceedings before a court or tribunal or an office holder of a court or tribunal.

*Attendance by electronic means*

- 3 (1) A person excused from a requirement to physically attend a court or tribunal by virtue of paragraph 2(1) or (3) must instead appear before the court, tribunal or office holder (as the case may be) by electronic means in accordance with a direction issued by the court or tribunal.
- (2) A person who fails to do so is to be regarded as having failed to comply with the requirement to physically attend from which the person is excused.
- (3) The power under sub-paragraph (1) to issue a direction includes the power to vary or revoke an earlier direction under that sub-paragraph.
- (4) A direction under sub-paragraph (1)—
  - (a) is to set out how the person is to appear by electronic means before the court, tribunal or office holder, and
  - (b) may include any other provision the court or tribunal considers appropriate.
- (5) A court or tribunal may issue a direction under sub-paragraph (1) on the motion of a party or of its own accord.
- (6) Before issuing a direction under sub-paragraph (1), the court or tribunal must—
  - (a) give all parties an opportunity to make representations, and
  - (b) have regard to any guidance issued by—
    - (i) the Lord President of the Court of Session, or
    - (ii) the Lord Justice General.
- (7) A direction under sub-paragraph (1) that—
  - (a) sets out how a party to proceedings is to attend, by electronic means, a trial diet must provide for the party to use means that enable the party to both see and hear all of the other parties, the judge and (where applicable) the jury and any witness who is giving evidence,
  - (b) sets out how a witness who is to give evidence at a trial diet is to attend by electronic means, must provide for the witness to use means that enable all of the parties, the judge and (where applicable) the jury to both see and hear the witness.
- (8) Nothing in sub-paragraph (7) is to be taken to mean that a person is to be enabled to see or hear a witness in a way that measures taken in accordance with an order of the court or tribunal would otherwise prevent.

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*Further provision about attendance by electronic means*

- 4 (1) A court or tribunal may—
- (a) issue a direction under paragraph 3(1) that applies for the purpose of all proceedings of a type specified in the direction, provided that the only party to the proceedings is a public official,
  - (b) issue a further direction under paragraph 3(1) overriding, for the purpose of specific proceedings, a general direction issued by virtue of paragraph (a).
- (2) Paragraph 3(6)(a) does not apply in relation to a general direction issued by virtue of sub-paragraph (1)(a).
- (3) In this paragraph—
- “public official” means—
    - (a) a person who is a public authority and is acting in that capacity, or
    - (b) a person who is acting on behalf of a public authority,
  - “public authority” is to be construed in accordance with section 6 of the Human Rights Act 1998.

*Publication of directions and guidance*

- 5 A person who issues any of the following must make it publicly available—
- (a) a direction under paragraph 1(5),
  - (b) guidance under paragraph 2(7)(b) or 3(6)(b).

*Interpretation of Part*

- 6 In this Part—
- “court” means any of the Scottish courts as defined in section 2(6) of the Judiciary and Courts (Scotland) Act 2008,
  - “proceedings” includes any process before a court or tribunal, or any office holder of a court or tribunal (for example, a process by which a warrant may be obtained for the purpose of investigating a suspected offence),
  - “requirement” means a requirement arising from an enactment or rule of law,
  - “tribunal” means any of the following—
    - (a) the First-tier Tribunal for Scotland,
    - (b) the Upper Tribunal for Scotland,
    - (c) a children's hearing.

## **PART 2**

### **FISCAL FINES**

*Fixed penalty: conditional offer by procurator fiscal*

- 7 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modification in sub-paragraph (2).
- (2) Section 302(7A) (maximum fixed penalty that may be prescribed) has effect as if for “£300” there were substituted “£500”.

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- (3) The Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 (S.S.I. 2008/108) applies in accordance with the modification in sub-paragraph (4).
- (4) The schedule has effect as if for it there were substituted—

“SCHEDULE

*Article 2*

THE SCALE OF FIXED PENALTIES

<i>Level on the scale</i>	<i>Amount of fixed penalty</i>
1	£50
2	£125
3	£175
4	£250
5	£325
6	£400
7	£500”.

**PART 3**

CASES BEGINNING WITH AN APPEARANCE FROM CUSTODY

*Ability to take case in any sheriff court*

- 8 (1) If it involves an appearance from police custody, a first calling of criminal proceedings in the sheriff court may—
- (a) be taken in any sheriff court in Scotland, and
  - (b) be dealt with in that court by a sheriff of any sheriffdom.
- (2) For the purposes of sub-paragraph (1), a first calling of proceedings involves an appearance from police custody if the person who is the accused or otherwise the subject of the proceedings—
- (a) was arrested by a constable in connection with the offence or other matter to which the proceedings relate, and
  - (b) is not released from custody before the appearance.
- (3) Where sub-paragraph (1) applies, it is for the Lord Advocate or the procurator fiscal to determine which sheriff court a first calling is to be taken in.
- (4) Sub-paragraph (5) applies where a first calling of criminal proceedings comes before a sheriff court by virtue of sub-paragraph (1).
- (5) The proceedings may continue to be dealt with—
- (a) in the same sheriff court, and
  - (b) by a sheriff of any sheriffdom.

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- (6) But that court can no longer deal—
  - (a) with proceedings on petition or indictment, after—
    - (i) committal until liberation in due course of law, or
    - (ii) any earlier calling at which a plea of not guilty is tendered by the accused but not accepted by the prosecutor,
  - (b) with summary criminal proceedings, after a calling at which a plea of not guilty is tendered by the accused but not accepted by the prosecutor.
- (7) References in this paragraph to the accused or other person who is the subject of the proceedings are to be read in relation to proceedings in which there is more than one such person as a reference to at least one of them.

*Paragraph 8: supporting provision*

- 9 (1) A sheriff court has jurisdiction for all cases which come before it by virtue of paragraph 8.
- (2) A procurator fiscal for a sheriff court district has—
  - (a) power to prosecute or, as the case may be, represent the interests of the prosecutor in any case that comes before the sheriff court of that district by virtue of paragraph 8,
  - (b) the like powers in relation to such cases as the prosecutor has for the purposes of other cases that come before the sheriff when exercising criminal jurisdiction.
- (3) For the purposes of paragraph 8, a sheriff may, without the need for further commission, exercise the jurisdiction and powers that attach to the office of sheriff in relation to criminal proceedings in every sheriffdom (and the same applies accordingly to any other member of the judiciary, so far as that member has the jurisdiction and powers that attach to the office of sheriff in relation to criminal proceedings).
- (4) In paragraph 8 and this paragraph, “criminal proceedings” means any proceedings in which a court is exercising criminal jurisdiction including in particular—
  - (a) proceedings on indictment,
  - (b) proceedings on petition,
  - (c) summary criminal proceedings,
  - (d) ancillary proceedings such as proceedings in respect of—
    - (i) breach of bail,
    - (ii) non-payment of a fine or other monetary penalty,
    - (iii) breach of an order of a court, or
    - (iv) failure of an accused person or a witness to attend a diet.
- (5) Any expression used in paragraph 8 or this paragraph which is also used in the Criminal Procedure (Scotland) Act 1995 has the same meaning here as it does there.
- (6) Paragraph 8 and this paragraph are without prejudice to sections 4 to 10, 34A and 137C of the Criminal Procedure (Scotland) Act 1995.

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## PART 4

### EXTENSION OF TIME LIMITS

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

- 10 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modifications in sub-paragraphs (2) to (6).
- (2) Section 52T (prevention of delay in trials: assessment orders and treatment orders) has effect as if—
- (a) in subsection (1), after the words “Subsections (4) to (9)” there were inserted “, (11), (12)(b) and (13)”,
  - (b) in subsection (4)(c), before the word “section” there were inserted “subsection (1) of”,
  - (c) after subsection (4) there were inserted—
    - “(5) In subsection (4)—
    - (a) the provisions of section 65 referred to in paragraphs (a) and (b) are to be read with subsections (11), (12)(b) and (13) of that section,
    - (b) the provisions of section 147 referred to in paragraphs (c) and (d) are to be read with subsections (5) and (6) of that section.”.
- (3) Section 65 (solemn proceedings: prevention of delay in trials) has effect as if after subsection (10) there were inserted—
- “(11) In calculating any of the periods specified in subsection (12), no account is to be taken of the suspension period.
  - (12) Those periods are—
    - (a) any period mentioned in subsection (1), including any such period as extended—
      - (i) under subsection (3),
      - (ii) on appeal under subsection (8), or
      - (iii) under section 74(4)(c),
    - (b) any period mentioned in subsection (4), including any such period as extended—
      - (i) under subsection (5), or
      - (ii) on appeal under subsection (8).
  - (13) For the purpose of subsection (11), the suspension period is the period of 6 months beginning with whichever is the later of—
    - (a) the day on which paragraph 10 of schedule 4 of the Coronavirus (Scotland) Act 2020 comes into force,
    - (b) the day on which—
      - (i) in relation to a period specified in subsection (12)(a), the accused first appears on petition in respect of the offence, or
      - (ii) in relation to a period specified in subsection (12)(b), the accused is committed for the offence until liberated in due course of law.”.

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- (4) Section 136(1) (time limit for certain offences) has effect as if for the words “six months” in both places where they occur there were substituted “ 12 months ”.
- (5) Section 147 (summary proceedings: prevention of delay in trials) has effect as if after subsection (4) there were inserted—
  - “(5) In calculating the period mentioned in subsection (1), including any such period as extended either under subsection (2) or on appeal under subsection (3), no account is to be taken of the suspension period.
  - (6) For the purpose of subsection (5), the suspension period is the period of 3 months beginning with whichever is the later of—
    - (a) the day on which paragraph 10 of schedule 4 of the Coronavirus (Scotland) Act 2020 comes into force,
    - (b) the day on which the complaint is brought in court.”.
- (6) Section 201 (power of court to adjourn case before sentence) has effect as if for subsection (3) there were substituted—
  - “(3) The court may adjourn the hearing of a case as mentioned in subsection (1) for such period as it considers appropriate.”.
- (7) The Criminal Justice (Scotland) Act 2003 applies in accordance with the modification in sub-paragraph (8).
- (8) Section 21 (sexual and certain other offences: reports) has effect as if subsections (9) and (10) were repealed.

## PART 5

### EVIDENCE

#### *Exceptions to the rule that hearsay evidence is inadmissible*

- 11 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modifications in this paragraph.
- (2) Section 259 (exceptions to the rule that hearsay evidence is inadmissible) has effect as if—
  - (a) in subsection (1)(a), for “subsection (2)” there were substituted “ subsection (2) or (2A) ”,
  - (b) after subsection (2) there were inserted—
    - “(2A) The reasons referred to in paragraph (a) of subsection (1) also include that—
      - (a) to have the person who made the statement physically attend the trial would give rise to a particular risk—
        - (i) to the person's wellbeing attributable to coronavirus, or
        - (ii) of transmitting coronavirus to others, and
      - (b) it is not reasonably practicable for the person to give the evidence in any other competent manner.”.



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- (c) in subsection (3), after “subsection (2)” there were inserted “ or in subsection (2A) ”,
- (d) in subsection (4), after “subsection (2)” there were inserted “ or in subsection (2A) ”,
- (e) after subsection (10) there were inserted—
  - “(11) In subsection (2A), “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020.”.

## PART 6

### COMMUNITY ORDERS

#### *Community payback orders: extension of unpaid work or other activity requirements*

- 12 (1) Sub-paragraph (2) applies to a community payback order—
- (a) imposed on or before the day of Royal Assent,
  - (b) which imposes an unpaid work or other activity requirement (regardless of whether or not it also imposes any other requirement), and
  - (c) where the specified period to complete the requirement ends after that day.
- (2) The order is to be read as if the specified period were extended by 12 months.
- (3) The Scottish Ministers may by regulations provide that, in relation to a community payback order to which sub-paragraph (4) applies, the order is to be read as if the specified period to complete the unpaid work or other activity requirement (read in accordance with sub-paragraph (2) if it applies to the order) were extended by the amount of time specified in the regulations.
- (4) This sub-paragraph applies to a community payback order—
- (a) imposed on or before the day on which the regulations come into force,
  - (b) which imposes an unpaid work or other activity requirement (regardless of whether or not it also imposes any other requirement), and
  - (c) where the specified period to complete the requirement (read in accordance with sub-paragraph (2) if it applies to the order) ends after that day.
- (5) Regulations under sub-paragraph (3) may be made only if the Scottish Ministers are satisfied that—
- (a) if the regulations were not made, it is likely that there will be a failure to comply with an unpaid work or other activity requirement in one or more community payback orders as a result of coronavirus, or
  - (b) the making of the regulations is necessary in response to the effect of coronavirus on local authorities or the Scottish Courts and Tribunals Service.
- (6) Regulations under sub-paragraph (3) are subject to the affirmative procedure.
- (7) The relevant local authority in relation to a community payback order to which sub-paragraph (2) or regulations made under sub-paragraph (3) applies must inform the offender of the effect of sub-paragraph (2) or, as the case may be, the regulations on the order.

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*Community payback orders: time limit for completion of unpaid work or other activity*

- 13 (1) Section 227L of the Criminal Procedure (Scotland) Act 1995 (time limit for completion of unpaid work or other activity) applies in accordance with the modifications in this paragraph.
- (2) Subsection (2)(a) has effect as if for “3 months” there were substituted “12 months”.
- (3) Subsection (2)(b) has effect as if for “6 months” there were substituted “12 months”.

*Community orders: postponement*

- 14 (1) The Scottish Ministers may by regulations postpone the effect of community payback orders and drug treatment and testing orders.
- (2) The regulations—
- (a) may make different provision for different descriptions of—
    - (i) order,
    - (ii) requirement imposed under an order,
    - (iii) offender in respect of whom the order is imposed,
    - (iv) offence the offender is convicted of,
  - (b) may provide for all requirements imposed by an order to be postponed or for specified requirements to be postponed,
  - (c) may not postpone unpaid work or other activity requirements,
  - (d) must specify—
    - (i) the day on which the requirements imposed by the orders are suspended, and
    - (ii) the day on which the requirements resume effect (which day must be no later than 6 months after the day specified by virtue of sub-paragraph (i)),
  - (e) may be made in relation to orders and requirements imposed by orders that have previously been postponed by virtue of regulations made under sub-paragraph (1).
- (3) The period during which a requirement is suspended by virtue of regulations under sub-paragraph (1) does not count as elapsed time in relation to any period specified as part of the requirement and any references in an order to periods or dates is to be read accordingly.
- (4) During a period in which a requirement is suspended by virtue of regulations under sub-paragraph (1), the offender on whom the requirement was imposed does not need to comply with the requirement (and therefore section 227ZC of the Criminal Procedure (Scotland) Act 1995 does not apply).
- (5) Regulations under sub-paragraph (1) may be made only if the Scottish Ministers are satisfied that—
- (a) if the regulations were not made, it is likely that there will be a failure to comply with a requirement imposed by one or more of the orders to which the regulations apply as a result of coronavirus, or
  - (b) the making of the regulations is necessary in response to the effect of coronavirus on local authorities or the Scottish Courts and Tribunals Service.
- (6) Regulations under sub-paragraph (1) are subject to the affirmative procedure.

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- (7) The relevant local authority in relation to a community payback order or drug treatment and testing order to which regulations made under sub-paragraph (1) applies must inform the offender of the effect of the regulations on the order.

*Community orders: variation*

- 15 (1) The Scottish Ministers may by regulations vary requirements imposed in community payback orders and drug treatment and testing orders.
- (2) Regulations under sub-paragraph (1) may—
- (a) make different provision for different descriptions of—
    - (i) order,
    - (ii) requirement imposed under an order,
    - (iii) offender in respect of whom the order is imposed,
    - (iv) offence the offender is convicted of,
  - (b) revoke orders,
  - (c) revoke requirements.
- (3) Regulations under sub-paragraph (1) may not—
- (a) modify the amount of compensation required to be paid under a compensation requirement,
  - (b) increase the total amount of hours specified in an unpaid work or other activity requirement,
  - (c) increase or extend the period for which a requirement is imposed,
  - (d) increase the period during which an offender must be at a specified place or not be at a specified place or class of place under a restricted movement requirement.
- (4) Regulations under sub-paragraph (1) may be made only if the Scottish Ministers are satisfied that—
- (a) the variations will not make the orders to which the regulations apply more onerous to comply with, and
  - (b) either—
    - (i) if the regulations were not made, it is likely that there will be a failure to comply with a requirement imposed by one or more of the orders to which the regulations apply as a result of coronavirus, or
    - (ii) the making of the regulations is necessary in response to the effect of coronavirus on local authorities or the Scottish Courts and Tribunals Service.
- (5) Regulations under sub-paragraph (1) are subject to the affirmative procedure.
- (6) The relevant local authority in relation to a community payback order or drug treatment and testing order to which regulations made under sub-paragraph (1) apply must inform the offender of the effect of the regulations on the order.

*Community orders: interpretation*

- 16 In paragraphs 12, 14 and 15—

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“community payback order” means a community payback order imposed under section 227A(1) or (4) or 227M(2) of the Criminal Procedure (Scotland) Act 1995,

“compensation requirement” has the meaning given in section 227H(1) of that Act,

“drug treatment and testing order” has the meaning given in section 234B(2) of that Act,

“relevant local authority” means—

(a) in relation to a community payback order, the local authority in whose area is situated the locality specified in the order by virtue of section 227C(2)(a) of that Act,

(b) in relation to a drug treatment and testing order, the local authority specified by virtue of section 234C(6) of that Act,

“restricted movement requirement” has the meaning given in section 227ZF(1) of that Act,

“specified period”, in relation to an unpaid work or other activity requirement, has the meaning given in section 227L(2) of that Act,

“unpaid work or other activity requirement” has the meaning given in section 227I(1) of that Act.

## PART 7

### PAROLE BOARD

#### *Chairing of the Parole Board*

17 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 applies in accordance with the modification in this paragraph.

(2) Schedule 2 has effect as if after paragraph 2J there were inserted—

“2K (1) If the Chairman of the Parole Board is unable to perform the functions of the Chairman under this Act or the Parole Board (Scotland) Rules 2001 (S.S.I. 2001/315) (the “Rules”) for reasons related to coronavirus, the most senior member of the Parole Board is to perform those functions instead.

(2) In sub-paragraph (1)—

(a) “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020, and

(b) “the most senior member of the Parole Board” means—

(i) the member whose initial appointment to the Parole Board began first, or

(ii) if more than one member falls within sub-paragraph (i), whichever of those members is most senior in age.

(3) For so long as sub-paragraph (1) has effect, in Rule 2(1) of the Rules, in the definition of “the chairman of the Board”, the reference to “the chairman of the Board appointed under paragraph 1 of Schedule 2 to the 1993 Act” is to be read instead as a reference to “the person performing the functions of the Chairman by virtue of paragraph 2K(1) of Schedule 2 to the 1993 Act”.

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- 2L (1) The Chairman of the Parole Board may make arrangements to delegate the functions of the Chairman to another member or members of the Parole Board.
- (2) Where arrangements under sub-paragraph (1) have effect, the functions of the Chairman may be performed by the member to whom the functions are delegated or, where the functions are delegated to more than one member, by any one of those members.
- (3) Arrangements under sub-paragraph (1) are to be treated as having effect since the date on which paragraph 17 of schedule 4 of the Coronavirus (Scotland) Act 2020 came into force (regardless of when the arrangements were made).
- (4) Where arrangements under sub-paragraph (1) have effect, the following references are to be read instead as references to the member or members (as the case may be) to whom the Chairman's functions have been delegated—
- (a) the references to the chairperson in paragraph 2HA(3) and (4),
  - (b) the reference to the Chairman in paragraph 2J,
  - (c) any reference to the Chairman of the Parole Board (however expressed) in the Rules.”.

*Modifications of the Parole Board Rules*

- 18 (1) The Parole Board (Scotland) Rules 2001 (S.S.I. 2001/315) apply in accordance with the modifications in this paragraph.
- (2) Rule 2(1) (interpretation) has effect as if in the definition of “prisoner” paragraph (c) were revoked.
- (3) Rule 12A (use of a live link) has effect as if—
- (a) in paragraph (1) for “evidence of a witness, or of the person concerned, to be given” there were substituted “proceedings to take place”,
  - (b) after paragraph (1) there were inserted—

“(1A) In considering the interests of justice for the purposes of paragraph (1), the Board or tribunal may take into account the risk of the proceedings not being able to take place other than through a live link (for example, because of a risk to public health for a reason relating to coronavirus if a person were to be required to give evidence in person).”.
- (4) Rule 17 (application) has effect as if—
- (a) in paragraph (1)—
    - (i) for “paragraph” there were substituted “ paragraphs (1A) and ”,
    - (ii) “, 3A(2),” were revoked,
  - (b) after paragraph (1) there were inserted—

“(1A) In paragraph (1), the reference to the case of a prisoner referred under section 17(3) of the 1993 Act does not include reference to the case of a prisoner referred under that section where—

    - (a) the prisoner is subject to an extended sentence by virtue of section 210A of the Criminal Procedure (Scotland) Act

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*Status: Point in time view as at 07/04/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)*

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1995 and has been recalled to custody under section 17(1) of the 1993 Act, and

- (b) the prisoner is serving the extension period (within the meaning of section 210A(2)(b) of the 1995 Act) of that sentence.”.

(5) Rule 20 (hearing) has effect as if for it there were substituted—

“If it considers that it is in the interests of justice to do so, the tribunal may—

- (a) on the application of any party; or
- (b) of its own motion,

hold an oral hearing of the prisoner's case.”.

## PART 8

### RELEASE OF PRISONERS

#### *Early release of prisoners*

- 19 (1) The Scottish Ministers may by regulations provide that a person who falls within a class of persons specified in the regulations is to be released from prison early.
- (2) The Scottish Ministers may make regulations under sub-paragraph (1) only if they are satisfied that the making of the regulations is necessary and proportionate, in response to the effects coronavirus is having or is likely to have on a prison or prisons generally, for the purpose of protecting—
  - (a) the security and good order of any prison to which the regulations relate, or
  - (b) the health, safety or welfare of prisoners, or those working, in any such prison.
- (3) But a person is not to be released from prison by virtue of regulations under sub-paragraph (1) if—
  - (a) the person falls within sub-paragraph (4), or
  - (b) the governor of the prison within which the person is detained for the time being considers that, if released, the person would pose an immediate risk of harm to an identified person.
- (4) A person falls within this sub-paragraph if the person is—
  - (a) a life prisoner,
  - (b) an untried prisoner,
  - (c) a terrorist prisoner within the meaning of section 1AB of the 1993 Act,
  - (d) liable to removal from the United Kingdom for the purposes of section 9 of that Act,
  - (e) subject to a supervised release order under section 209 of the 1995 Act,
  - (f) serving a sentence imposed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),
  - (g) the subject of proceedings under the Extradition Act 2003, or
  - (h) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
- (5) In sub-paragraph (4)—

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- (a) “life prisoner” means a person who is—
  - (i) serving a sentence of imprisonment for life,
  - (ii) detained without limit of time or detained for life, or
  - (iii) subject to an order for lifelong restriction made under section 201F of the 1995 Act,
- (b) “untried prisoner” means a person who, whether or not in prison for any other reason, is in prison—
  - (i) having been committed for examination or trial on any criminal charge,
  - (ii) by virtue of remand in custody under the Extradition Act 2003,
  - (iii) by virtue of detention under schedule 2 or 3 of the Immigration Act 1971, or
  - (iv) following conviction but awaiting sentence.
- (6) Regulations under sub-paragraph (1) must—
  - (a) specify the date on which a person is to be released from prison under the regulations, or
  - (b) make provision about how that date is to be calculated.
- (7) Where a person released from prison by virtue of regulations under sub-paragraph (1) is, immediately before release—
  - (a) a short-term prisoner, the person is to be treated for all purposes as if the person had been released under section 1(1) of the 1993 Act,
  - (b) a long-term prisoner, the person is to be treated for all purposes as if the person had been released under section 1(3) of the 1993 Act,
  - (c) serving a sentence of detention for a period of less than 4 years imposed under section 207(2) of the 1995 Act, the person is to be treated for all purposes as if the person had been released under section 1(1) of the 1993 Act (as applied by section 6 of that Act),
  - (d) serving a sentence of detention for a period of 4 years or more imposed under section 207(2) of the 1995 Act, the person is to be treated for all purposes as if the person had been released under section 1(3) of the 1993 Act (as applied by section 6 of that Act),
  - (e) serving a sentence of detention imposed under section 208(1) of the 1995 Act, the person is to be treated for all purposes as if the person had been released under section 7(2) of the 1993 Act.
- (8) Regulations under sub-paragraph (1) may make different provision for—
  - (a) different classes of person,
  - (b) different prisons or classes of prison, or parts of a prison,
  - (c) other different purposes.
- (9) In this paragraph—
  - “the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995,
  - “long-term prisoner” and “short-term prisoner” have the meanings given by section 27 of the 1993 Act,
  - “prison” means—

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*Status: Point in time view as at 07/04/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)*

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- (a) a prison within the meaning of section 43 of the Prisons (Scotland) Act 1989,
- (b) a young offenders institution within the meaning of section 19(1)(b) of that Act.

*Regulations under paragraph 19: procedure and expiry*

- 20 (1) Regulations under paragraph 19(1) are subject to the affirmative procedure unless they fall within sub-paragraph (2).
- (2) Regulations fall within this sub-paragraph if they—
- (a) do not provide for the release of any person more than 180 days earlier than the person would otherwise be released, and
  - (b) contain a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without them being subject to the affirmative procedure.
- (3) Regulations which fall within sub-paragraph (2)—
- (a) must be laid before the Scottish Parliament as soon as practicable after they are made, and
  - (b) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, they are approved by resolution of the Scottish Parliament.
- (4) In calculating the period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
- (a) in recess for more than 4 days, or
  - (b) dissolved.
- (5) If regulations cease to have effect as a result of sub-paragraph (3)(b), that does not—
- (a) affect anything previously done under the regulations,
  - (b) prevent the making of new regulations.
- (6) Subject to sub-paragraph (3)(b), regulations under paragraph 19(1) cease to have effect at the end of the period of 180 days beginning with the day on which they are made.
- (7) Nothing in sub-paragraph (6) prevents the Scottish Ministers—
- (a) revoking regulations under paragraph 19(1) before the end of the period mentioned in sub-paragraph (6),
  - (b) making further regulations under paragraph 19(1).

## PART 9

### LEGAL AID

*Assessment of claims for interim payment of fees and outlays*

- 21 (1) The Legal Aid (Scotland) Act 1986 applies in accordance with the modification in this paragraph.



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*Status: Point in time view as at 07/04/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)*

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(2) Section 33 (fees and outlays of solicitors and counsel) has effect as if after subsection (5) there were inserted—

“(6) Subsections (7) to (9) apply where—

- (a) a solicitor or counsel submits a claim to the Board in respect of fees or outlays incurred by the solicitor or counsel in connection with—
    - (i) the provision of legal aid by the solicitor or counsel prior to the completion of the proceedings for which the legal aid was granted, or
    - (ii) the provision of advice and assistance by the solicitor or counsel to a person while the advice and assistance is being provided by the solicitor or counsel to the person, and
  - (b) in submitting the claim, the solicitor or counsel confirms to the Board that the fees or outlays to which the claim relates have been properly incurred by the solicitor or counsel.
- (7) The fees or outlays to which the claim relates are to be treated as having been properly incurred by the solicitor or counsel for the purposes of subsection (1).
- (8) Any sum paid out of the Fund to the solicitor or counsel pursuant to the claim is to be treated as having been paid out of the Fund in accordance with section 4(2)(a).
- (9) Where the claim is made under regulation 11 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (S.I. 1989/1490) in relation to the provision of civil legal aid, the fees to which the claim relates are to be treated, for the purposes of the regulation, as having been necessarily and reasonably incurred in connection with the proceedings for which the legal aid is granted.”.

*Recovery of overpayment of interim fees or outlays paid to firms*

22 (1) The Legal Aid (Scotland) Act 1986 applies in accordance with the modification in this paragraph.

(2) Section 33 (fees and outlays of solicitors and counsel) has effect as if after subsection (9) (inserted by paragraph 21) there were inserted—

“(10) Subsection (11) applies where—

- (a) a sum is paid out of the Fund after the day on which paragraph 22 of schedule 4 of the Coronavirus (Scotland) Act 2020 comes into force (the “interim payment”) in respect of fees or outlays incurred by a solicitor in connection with—
  - (i) the provision of legal aid by the solicitor prior to the completion of the proceedings for which the legal aid was granted, or
  - (ii) the provision of advice and assistance by the solicitor to a person while the advice and assistance is being provided by the solicitor to the person,
- (b) on the instruction of the solicitor, the interim payment is paid by the Board to the firm of the solicitor, and

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- (c) on the completion of the proceedings for which the legal aid was granted (or, as the case may be, on the cessation of the advice and assistance by the solicitor to the person), the Board determines that the interim payment exceeds the sum payable out of the Fund to the solicitor under subsection (1) in connection with the provision of the legal aid (or the advice and assistance) by the solicitor.
- (11) The firm of the solicitor is jointly and severally liable with the solicitor for the repayment to the Fund of the excess mentioned in subsection (10)(c).
- (12) Subsection (13) applies where—
  - (a) a firm is jointly and severally liable for the repayment of a sum to the Fund under subsection (11) (the “repayment amount”),
  - (b) the repayment amount has not been repaid to the Fund,
  - (c) a separate sum is due to be paid out of the Fund to any solicitor of the firm (the “amount payable”), and
  - (d) the solicitor has instructed the Board to pay the amount payable to the firm.
- (13) The Board may deduct all or part of the repayment amount from the amount payable.”.

*Payment of interim fees for civil legal aid to counsel*

- 23 (1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989 (S.I. 1989/1490) apply in accordance with the modification in this paragraph.
- (2) Regulation 11 has effect as if paragraph (2) were revoked.

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**Changes to legislation:**

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