

# **CORONAVIRUS (EXTENSION AND EXPIRY) (SCOTLAND) ACT 2021**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***Schedule: Transitional and saving provisions***

47. Paragraph 1(1) of the schedule of the Act provides that notwithstanding sections 2(3) and 7(1) of the Act, which expire schedule 3 of the Coronavirus (Scotland) Act 2020 at the end of 30 September 2021, the provisions set out in paragraph 1(2) to (6) of the schedule of the Act continue to have effect in relation to the circumstances specified.
48. Paragraph 1(2) of the schedule of the Act provides that, in relation to child protection orders made by the end of 30 September 2021, paragraph 2(1) to (6) of schedule 3 of the Coronavirus (Scotland) Act 2020 continues in effect so that—
- there is no requirement for a children’s hearing to review the child protection order on the second working day after the day on which the order is made, and
  - the timescales to apply to the sheriff to vary or terminate the order to reflect that there is no second working day hearing.
49. Paragraph 1(3) of the schedule of the Act provides that paragraph 3 (maximum period for which compulsory supervision order has effect) of schedule 3 of the Coronavirus (Scotland) Act 2020 continues in effect in relation to certain compulsory supervision orders so that an order which has, as at the date of expiry of paragraph 3 of schedule 3 of the Coronavirus (Scotland) Act 2020, already passed its original expiry date, without a children’s hearing making a decision to continue, vary or terminate the order under section 138(3) of the Children’s Hearings (Scotland) Act 2011, will not lapse. Such compulsory supervision orders will continue to have effect for up to an additional 6 months beyond their original expiry date, in accordance with section 83(7)(c) of the 2011 Act (as inserted by schedule 3 of the 2020 Act) to allow time for a children’s hearing to make a decision to continue, vary or terminate the order.
50. Paragraph 1(4) of the Act continues and adjusts the effect of paragraph 4 of schedule 3 of the Coronavirus (Scotland) Act 2020 for interim compulsory supervision orders and interim variation of compulsory supervision orders made before the end of 30 September 2021 so that the maximum period for which those orders have effect is—
- where the order is made by a children’s hearing, the period of 44 days, or
  - where the order is made by a sheriff, the period the sheriff specifies or, if earlier, 12 November 2021.
51. Paragraph 1(5) of the schedule of the Act provides that certain sub-paragraphs of paragraph 7 of schedule 3 of the Coronavirus (Scotland) Act 2020 continue in effect in relation to decisions or determinations made before the end of 30 September 2021 that are being appealed against, so that appellants continue to have extended times in

*These notes relate to the Coronavirus (Extension and Expiry) (Scotland)  
Act 2021 (asp 19) which received Royal Assent on 4 August 2021*

which to lodge an appeal and so that it is clear which timescale applies to disposal of those appeals.

52. Paragraph 1(6) to (8) of the schedule makes transitional provision relating to children who are in a placement of 4 or more children (who are not all siblings) before expiry of the schedule 3 of the Coronavirus (Scotland) Act 2020. This is needed because regulation 27A(1) of the Looked After Children (Scotland) Regulations 2009 provides that a local authority must not place a child with a foster carer where the placement would result in more than 3 children being placed with that foster carer at any one time (“the placement limit”). Regulation 27A(2) of the 2009 regulations provides certain exemptions to the placement limit. The placement limit in regulation 27A was temporarily disapplied by schedule 3, but will reapply at the end of 30 September 2021 (when section 2(3) of the Act expires schedule 3), and this means that children who are currently with a foster carer, in breach of the placement limit, would have to be moved, even if this is not in their best interests. Therefore, paragraph 1(6) to (8) provide that if a child is currently in such a placement, and is not the subject of an emergency or short-term placement, then regulation 27B(2) to (7) of the Looked After Children (Scotland) Regulations 2009 apply as if the child had been placed with the foster carer on 30 September 2021. This means that the local authority must refer the child’s case to the fostering panel within 4 weeks of 30 September 2021 (or as soon as practicable thereafter). After receiving and taking into account a recommendation from the fostering panel, the local authority has a period of 14 days to decide whether the foster carer is suitable to be a carer for the child. If this is answered in the affirmative, the exemption to the placement limit in regulation 27A(2)(c) of the 2009 Regulations applies, allowing the child to remain with that foster carer. This also ensures that if, in placing a child during the Coronavirus emergency, the local authority relied on the disapplication of the placement limit, the child’s case will be reviewed by the local authority and the fostering panel within an appropriate timescale.
53. Paragraph 2 of the schedule provides that notwithstanding section 2(5)(a) of the Act, paragraph 6 of schedule 6 of the Coronavirus (Scotland) Act 2020 continues in effect in relation to a request for information made under section 1(1) of the Freedom of Information (Scotland) Act 2002 before the end of 30 September 2021. This means that the Scottish Information Commissioner may continue to take the effects of coronavirus into account in deciding an application made under section (47(1) of the 2002 Act in respect of a request for information, where that request was made before the end of 30 September 2021.