

CORONAVIRUS (EXTENSION AND EXPIRY) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Section 2: Expiry of provisions

Coronavirus (Scotland) Act 2020 provisions

10. Although the Scottish Government considered it appropriate that the expiry of the Scottish Acts should be delayed, it was also of the view that a number of the temporary measures contained in them should expire on 30 September 2021 as they would have done without the intervention of this Act. Section 2(1) of the Act therefore provides that certain provisions of the Coronavirus (Scotland) Act 2020 - set out in section 2(2) to (7) of the Act - expire at the end of 30 September 2021. Those provisions are as follows.
11. Paragraphs 2 and 3 of schedule 2¹ (moratorium on diligence: multiple applications) remove the prohibition against benefitting from more than one moratorium on diligence in any 12 month period.
12. Paragraph 2 of schedule 3 (Children: child protection) removes the requirement for a second working day hearing to be held following the issuing of a child protection order, and amends the timescales to apply to the sheriff to vary or terminate the order to reflect that there was no second working day hearing.
13. The provisions in paragraphs 1, 3 to 5 and 7 to 9 of schedule 3 (Children: Children's hearings) relax existing requirements for the composition of children's hearings, and the administration and conduct of children's hearings, and there are extensions to the timescales for when certain legal orders must be reviewed and appeals against legal orders lodged.
14. Paragraph 10 of schedule 3 (Children: Looked after children) extends the timescales for review of children's cases when they are placed in kinship care and enable local authorities to use foster carers more flexibly to look after additional children when necessary.
15. Paragraph 11 of schedule 3 (Vulnerable adults: cases of adults with incapacity) effectively 'stops the clock' on the duration of guardianship orders and certificates authorising medical treatment for the period the emergency legislation is in force. It has been suspended since 30 September 2020².
16. Paragraph 11 of schedule 4³ introduced an additional exception to the rule that hearsay evidence in criminal proceedings is inadmissible where having a witness appear in court

¹ For further information see [paragraphs 40 and 41](#) of the Explanatory Notes to the Coronavirus (Scotland) Act 2020.

² For further information see [paragraphs 49 to 89](#) of the Explanatory Notes to the Coronavirus (Scotland) Act 2020.

³ For further information see [paragraphs 52 to 54](#) of the Explanatory Notes to the Coronavirus (Scotland) Act 2020.

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

in person was deemed to pose a risk to the health of that person or others arising from coronavirus.

17. Paragraph 12(1), (2) and (7) of schedule 4 relate to a one-off extension of the time to complete unpaid work or other activity requirements by 12 months, for community payback orders imposed on or before the date the Coronavirus (Scotland) Act 2020 came into force.
18. The provisions in paragraphs 12(3), (4), (5), (6) and (7) of schedule 4 enable the Scottish Ministers to make regulations which extend the period allowed to complete the unpaid work or other activity requirements of a community payback order. Ministers may do so only if it is required due to a likely failure to comply with the requirements due to COVID-19, or in response to the effects of COVID-19 on local authorities or the courts.
19. Paragraph 14 of schedule 4 allows for the postponement of community payback orders.
20. The provisions in paragraph 15 of schedule 4 allow for regulations to be made to vary or revoke requirements imposed in community payback orders or drug treatment and testing orders. Section 2(4) of the Act expires paragraph 15 in relation to drug treatment and testing orders so that the regulation making power can no longer be used to vary or revoke requirements imposed in those orders⁴.
21. Paragraph 4 of schedule 5, sub-paragraph (5)(d) (alcohol licensing: licensing boards etc.) allows for licensing board meetings to be held in private for a reason relating to coronavirus.
22. Paragraph 6 of schedule 6 (freedom of information: Commissioner's ability to take account of impact of coronavirus) enables the Scottish Information Commissioner to decide that, notwithstanding a public authority's failure to comply with timescales for responding to requests and requirements for review under the Freedom of Information (Scotland) Act 2002, the authority has complied with Part 1 of that Act if certain conditions are met.
23. Paragraph 13 of schedule 6 (grounds for exclusion of the public from meetings of local authorities) enables local authorities to exclude members of the public from a meeting of a local authority whenever it is likely that, if members of the public were present, there would be a real and substantial risk to public health due to infection or contamination with coronavirus.
24. Paragraph 15 of schedule 6 (duties under the Public Finance and Accountability (Scotland) Act 2000) allows for amendment of the statutory deadlines for annual accounts as set by the Public Finance and Accountability Act 2000. The deadlines for such accounts were the 31 December 2020 and 31 December 2021 respectively.
25. Paragraphs 1 and 5 of schedule 7 (social security: period for re-determination of entitlement) relax the timescales which apply for Social Security Scotland making re-determinations.
26. Paragraphs 23 to 30 of schedule 7 (scrutiny of subordinate legislation in urgent cases) provide that where subordinate legislation is being made which would ordinarily be subject to the affirmative procedure such subordinate legislation may be made without being subject to that procedure if the person making the legislation considers that necessary by reason of urgency.

Coronavirus (Scotland) (No.2) Act 2020

27. Subsection (8) of section 2 of the Act provides that certain provisions of the Coronavirus (Scotland) (No.2) Act 2020 set out in that subsection expire at the end of 30 September 2021. Those provisions are as follows.

⁴ For further information see [paragraphs 55 to 68](#) of the Explanatory Notes to the Coronavirus (Scotland) Act 2020.

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Act 2021 (asp 19) which received Royal Assent on 4 August 2021*

28. Paragraph 3 of schedule 1⁵ (termination of student residential tenancy by tenant: requirements for notice) makes provision in relation to tenancies for students in halls of residence and purpose built student accommodation. The provisions in paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020 create a 7-day notice period where a student can terminate their lease. The 7-day notice period applies to student residential tenancies entered into prior to 27 May 2020 where the accommodation was occupied prior to that date.
29. Paragraph 6 of schedule 1 (carer's allowance supplement) modified the effect of Section 81 of the Social Security (Scotland) Act 2018. This has had the effect of adding an additional £230.10 to awards of Carer's Allowance Supplement for the period from 1 April 2020 to 30 September 2020. This addition is known as the Coronavirus Carer's Allowance Supplement. Further legislation was introduced to the Scottish Parliament on 22 June 2021 to allow for provision to be made for a subsequent increase to carer's allowance supplement for the period of 1 October 2021 to 31 March 2022.
30. Paragraph 24 of schedule 1⁶ (marriages and civil partnerships during emergency period) requires the Scottish Ministers, in conjunction with the Registrar General of Births, Deaths and Marriages for Scotland, to take such steps as they consider necessary to ensure that the solemnisation of marriages and registration of civil partnerships continue to be available in Scotland whilst it is in force. It specifies that the steps taken must ensure that a person's right to marry, which is protected by Article 12 of the European Convention on Human Rights, is not disproportionately interfered with for reasons relating to coronavirus. It also requires the Scottish Ministers to report on the steps taken and on the number of marriages and civil partnerships that have taken place. It was suspended by regulation 4 of the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provisions) Regulations 2021 (S.S.I. 2021/93) on 29 March 2021.

Availability of powers to bring forward expiry

31. Section 2(9) and (10) allows Scottish Ministers to use the powers in section 13(1) of the Coronavirus (Scotland) Act 2020 and section 10(1) of the Coronavirus (Scotland) (No.2) Act 2020 respectively to bring forward the expiry of any of the provisions to be expired by sections 2(2) to (8) of the Act.

⁵ For further information see [paragraph 26](#) of the Explanatory Notes to the Coronavirus (Scotland) (No.2) Act 2020.

⁶ For further information see [paragraph 76](#) of the Explanatory Notes to the Coronavirus (Scotland) (No.2) Act 2020.