

CORONAVIRUS (EXTENSION AND EXPIRY) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

3. The Coronavirus (Scotland) Act 2020 and Coronavirus (No.2) (Scotland) Act 2020 (“the Scottish Acts”) were passed by the Scottish Parliament on 1 April and 20 May 2020 respectively in response to the emergency situation caused by the coronavirus (COVID-19) pandemic. They contain a series of measures most of which were temporary in nature. When the Scottish Acts were passed, they provided that they would expire at the end of September 2020. They contained powers to amend that date – these powers were exercised ultimately to provide for the expiry of the Scottish Acts on 30 September 2021.
4. While in June 2021 the programme for vaccination of the adult population in Scotland against coronavirus continued and infection rates remained under close observation, the Scottish Government considered that many of the temporary measures contained in the Scottish Acts would remain necessary beyond 30 September 2021. The Bill for this Act was therefore introduced in late June 2021 (as an emergency Bill) with its purpose being to delay the expiry of the Acts.

Section 1: Extension of provisions

5. Section 1(2) and (3) of the Act amend section 12 of the Coronavirus (Scotland) Act 2020. Section 12 of that Act provides for Part 1 of that Act to expire on 30 September 2020, unless the Scottish Ministers make regulations providing for its effect to continue until 31 March 2021. If such regulations are made, the Scottish Ministers may make further regulations allowing one further, final extension until 30 September 2021, at which point any remaining provisions in the Act will expire. As mentioned in paragraph 3 above, these powers to make regulations were exercised ultimately to provide for the expiry of that Act on 30 September 2021.
6. Subsection (2) changes the date set out in section 12(1) of the Coronavirus (Scotland) Act 2020 (relating to the expiry of the provisions in Part 1 of that Act) from 30 September 2021 to the end of 31 March 2022. Subsection (3) removes sections 12(3) and (4) of that Act and inserts a new subsection (3) which confers on the Scottish Ministers a power to amend by regulations section 12(1) of that Act to further extend the date on which the provisions in Part 1 of that Act expire from the end of the newly inserted 31 March 2022 to the end of 30 September 2022.
7. Subsections (5) and (6) of section 1 of the Act amend section 9 of the Coronavirus (Scotland) (No.2) Act 2020. Section 9 of that Act provides for Part 1 of that Act to expire on 30 September 2020, unless the Scottish Ministers make regulations providing for its effect to continue until 31 March 2021 with one further, final extension until 30 September 2021 available thereafter, at which point any remaining provisions in the Act will expire. These powers to make regulations were also exercised, ultimately to provide for the expiry of that Act on 30 September 2021.

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8. Subsection (5) changes the date set out in section 9(1) of the Coronavirus (Scotland) (No.2) Act 2020 (relating to the expiry of the provisions in Part 1 of that Act) from 30 September 2021 to the end of 31 March 2022.
9. Subsection (6) removes section 9(3) and (4) of that Act and inserts a new subsection (3) which confers on the Scottish Ministers a power to amend by regulations section 9(1) of that Act to further extend the date on which the provisions in Part 1 of that Act expire from the end of the newly inserted 31 March 2022 to the end of 30 September 2022.

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 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

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.

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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.
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.

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

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

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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.

Section 3: Suspension of provisions

32. Section 53 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) provides that Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate) may inspect registered care services, and sets out the purpose of inspections. Paragraph 22 of schedule 1 of the Coronavirus (Scotland)(No.2) Act 2020 (care homes: inspections and reporting on coronavirus deaths) added section 53A to the 2010 Act, requiring that the Care Inspectorate must lay a report before Parliament every two weeks during the emergency period. The reports must set out which care home services it has inspected in the two week period as well as the findings of those inspections. Paragraph 23 of schedule 1 inserted section 79A into the 2010 Act which introduces new duties about the reporting of deaths in care homes services from or attributable to coronavirus. Section 79A(1) of the 2010 Act requires that care home service providers must provide certain information to the Care Inspectorate each day in relation to the numbers of deaths which have occurred in a care home service, whether caused by or attributable to coronavirus or not.
33. Section 3(1) of the Act suspends the operation of paragraphs 22 and 23 of schedule 1 of the Coronavirus (Scotland)(No.2) Act 2020. Section 3(2) provides that these provisions are to be treated as having been suspended under section 8(1)(a) of that Act meaning that they could be revived, if required, under section 8(1)(b) and (2) of that Act.

Section 4: Notice of changes to coronavirus related measures

34. Section 4 of the Act introduces a requirement for the Scottish Ministers to make a written statement to the Scottish Parliament on any changes they propose to make to measures contained in the Scottish Acts at least 24 hours in advance of those changes coming into force. Ministers do not have to comply with this requirement if they consider there are reasons of urgency which means 24 hours’ notice cannot be given.

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

Section 5: Report on certain matters relating to Act

35. Section 5 of the Act introduces a requirement for the Scottish Ministers to produce and lay before the Scottish Parliament within one month of the date following Royal Assent a report on a number of matters, including in particular:
- progress being made towards marriage ceremonies and civil partnership registrations and associated celebratory events being able to be held without restrictions,
 - the Scottish Ministers' view of the effect of this Act on the matters set out in section 5(1)(b)(i) to (v) which includes live music and live music venues and social care services, and
 - the use of and number of fiscal fines issued (including at what level of the scale) during the period beginning 7 April 2020 and ending on the day on which this Act received Royal Assent (4 August 2021),
 - information on the restrictions remaining in place affecting the holding of marriage ceremonies and civil partnership registrations and associated celebratory events,
 - information on the measures in place to help businesses deal with the disruption attributable to coronavirus and any plans the Scottish Ministers have for further measures to assist businesses,
 - information on the social security support to help carers put in place for a reason related to coronavirus and any plans for further social security support to help carers which the Scottish Ministers propose to put in place for such a reason,
 - information on the support available to persons who are required to self-isolate for a reason relating to coronavirus and any plans for further support for such persons in such circumstances,
 - information on the measures in place to restore social care services to their level as at 1 March 2020 and any plans for further such measures.

Section 6: Reporting on status of eviction provisions

36. Section 6 increases the information which is to be provided in the existing bi-monthly reports produced under section 15 of the Coronavirus (Scotland) Act 2020 so as to include information about: current and planned measures to protect tenants from eviction, social housing eviction proceedings raised, rent arrears in social housing and eviction orders issued by the First Tier Tribunal. The requirement doesn't extend to measures which have been expired during the reporting period.

Section 7: Report on effect of Act on social care services

37. Section 7 of the Act requires the Scottish Ministers to prepare and publish a report on the effect that the extension and expiry of provisions of the Scottish Acts by this Act is likely to have on social care services. The report must be laid before the Scottish Parliament within one month after the date on which Royal Assent is received (4 August 2021).

Section 8: Minor and consequential provisions

38. Section 8(1) and (4) of the Act makes amendments to section 4 and schedule 4 of the Coronavirus (Scotland) Act 2020 as at the end of 30 September 2021. Section 8(8) makes an amendment to schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020. These amendments are made in consequence of the provisions in section 2 of the Act.
39. Section 8 also revokes—

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- the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 (S.S.I. 2020/299) (which provided for the extension of the main provisions of the Scottish Acts until 31 March 2021),
 - the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021 (S.S.I. 2021/152) (which provides for the current extension of the main provisions of the Scottish Acts until 30 September 2021),
 - the Coronavirus (Scotland) Act 2020 (Suspension: Adults with Incapacity) Regulations 2020 (S.S.I. 2020/267) (these regulations suspended the operation of paragraph 11(2) and (3) of schedule 3 of the Coronavirus (Scotland) Act 2020, which is expired by section 2(3) of the Act), and
 - regulation 4 of the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provisions) Regulations 2021 (S.S.I. 2021/93) (regulation 4 suspended the operation of paragraph 24 (marriage and civil partnership) of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020, which is expired by section 28)(c) of the Act).
40. Section 8(2) and (6) of the Act amends the requirement for the Scottish Ministers to lay a statement of reasons as to why the expiry of the main provisions of the Scottish Acts should be extended (set out in section 12(6) of the Coronavirus (Scotland) Act 2020 and section 9(6) of the Coronavirus (Scotland) (No.2) Act 2020) so that the statement must be laid at the same time as laying a draft Scottish statutory instrument containing draft regulations.
41. Section 8(3) and (7) of the Act repeal provisions of the Scottish Acts which are no longer required due to the operation of section 2(7)(b) of the Act.
42. Section 8(9) of the Act repeals two spent provisions in the Coronavirus (Scotland) (No.2) Act 2020, which contained amendments to the freedom of information provisions in the Coronavirus (Scotland) Act 2020. Schedule 4, Part 8, Paragraph 10 amended paragraph 6 of Part 2 of schedule 6 of the Coronavirus (Scotland) Act 2020, which confers discretion on the Scottish Information Commissioner to take into account the coronavirus outbreak when deciding if authorities have failed to comply with freedom of information timescales, and Schedule 4, Part 8, Paragraph 11 repealed paragraphs 3 to 5 of Part 2 of schedule 6 of the Coronavirus (Scotland) Act 2020, which extended the timescales for response, and gave the Scottish Ministers powers to further extend by direction. These amendments came into effect when the Coronavirus (Scotland) (No.2) Act 2020 received Royal Assent, so the provisions have accomplished their purposes.

Section 9: Transitional and saving provision

43. Section 9 of the Act introduces the schedule which sets out specific transitional and saving provisions which are to apply to certain provisions of the Scottish Acts that are expired by section 2 of the Act.
44. Transitional provisions deal with the transition from the existing legal provision to the new for any cases in operation when the law changes in respect of which the straightforward application of the new law would not be suitable. They are therefore usually temporary in nature and become spent once all the past circumstances with which they were designed to deal have been dealt with. Saving provisions narrow or exclude the application of the new law so as to preserve the effect of a pre-existing enactment or legal rule in relation to certain cases or circumstances.

Section 10: Power to make provision in connection with expiry

45. Section 10 of the Act allows the Scottish Ministers, by regulations, to make consequential, transitional, transitory or saving provision in connection with the expiry

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under section 2 of any provision of the Scottish Acts. This will allow, for instance, the status in law of anything done under the provisions of the Acts while they are in effect to be clarified if necessary for the period after the Acts expire.

Section 11: Commencement

46. Section 11(2) of the Act sets out that most of the provisions of the Act will come into force on the day after Royal Assent. Section 11(1) of the Act provides some exceptions to this and section 7(1), (3), (4), (5), (7), (8), (11) and (12) of the Act will come into force at the end of 30 September 2021 - this is because these provisions only need to take effect when the relevant provisions of the Scottish Acts are expired at the end of 30 September 2021.

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 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

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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.