

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT: OVERVIEW

Part 5: Temporary Justice Measures

Overview

188. The schedule makes changes to the law that are only temporary, in the sense that they will stop being law unless the Scottish Parliament agrees each year to their continuing to be law and they can only continue to be law until 30 November 2025 at the latest.
189. **Part 5** incorporates the schedule into this Act and deals with how and when its provisions stop having legal effect. The latter sections of the Part make some changes to the law that need to stay in effect beyond the lifetime of the temporary provisions.

Section 50: The measures

190. This section introduces the schedule of this Act.

Section 51: Power to suspend and revive

191. This section allows the Scottish Government to temporarily stop provisions in the schedule having legal effect (suspend them) and to then restore their legal effect (revive them).
192. Only provisions that have not fully expired under section 52 or 53 can be suspended and revived.
193. Regulations to suspend or revive a provision are subject to parliamentary scrutiny under the negative procedure (see section 54).
194. Subsection (2) applies the default statutory rules that deal with the effect of repealing legislation (i.e. permanently removing it from the statute book) to a case where a provision is merely suspended. In broad terms, the default rules under sections 15 to 17 of the Interpretation and Legislative Reform (Scotland) Act 2010 mean that anything that was legally or illegally done under a law before its repeal (or in this case suspension) continues to be treated as having been done legally or illegally (respectively). For example, paragraph 15 of the schedule allows the court to reschedule when a person is to appear before it. If that paragraph were to be suspended, any appearance dates the court set before the suspension would still be treated as valid.

Section 52: Expiry

195. This section will cause all the temporary measures in the schedule (apart from any that were expired earlier under section 53) to cease to have legal effect on the date stated in subsection (1). The expiry date is initially stated to be 30 November 2023.

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196. Subsection (2) allows the Scottish Government to make regulations to push the expiry date back a year at a time, but they cannot push it back beyond 30 November 2025.
197. Subsection (3) requires the Government to review the operation of schedule provisions before they expire in order to decide whether to push their expiry date back; this duty does not apply ahead of provisions expiring in 2025 because the Government has no power to push expiry back beyond the end of November that year. Subsection (6) requires the Government to consult others as part of the review process.
198. The Government cannot make any regulations to push the expiry date back unless the Parliament approves them in draft first (see section 54). Section 52(7) further provides that when laying draft regulations before the Parliament for its approval, the Government also has to lay before the Parliament a statement explaining why it is seeking to push the expiry date back, the findings of its most recent review under subsection (3) and a summary of what consultation was carried out in undertaking that review.
199. Provisions of the schedule that expire will be subject to the same default statutory rules as they would were they repealed (see section 18, together with section 1(6), of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 53: Power to bring expiry forward

200. Rather than wait for provisions in the schedule to expire under section 40, this section allows the Scottish Government to expire provisions sooner.
201. Regulations under section 53 are subject to the negative procedure (see section 54).

Section 54: Regulations under Part 5

202. This section makes clear that regulations under the preceding sections of the Part can make different provision for different purposes and sets out the parliamentary scrutiny procedures that apply to those regulations.
203. The negative procedure is defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010.
204. The affirmative procedure is defined by section 29 of that Act.

Section 55: Criminal procedure time limits: consequential modifications

205. This section makes permanent changes to the Criminal Procedure (Scotland) Act 1995 (the “1995 Act”). The changes are needed in consequence of the modifications to that Act temporarily made by Chapter 1 of Part 5 of the schedule which makes provision to temporarily extend certain statutory time limits contained in the 1995 Act relating to criminal proceedings. The changes made by this section prevent references to those time limits elsewhere in the 1995 Act being falsified by the temporary changes. For example, section 65(3) of the 1995 Act refers to an 11 month period specified in section 65(1), which is being temporarily changed to a 17 month period. Rather than substitute the words “17 months” in place of “11 months” in section 65(3), section 55 of this Act adjusts it so that it refers only to the period specified in section 65(1). So adjusted, the terms of section 65(3) will be the same while the temporary adjustment to section 65(1) is in force and when it is not. Accordingly the modifications made by section 55 of this Act are permanent, despite being in consequence of substantive modifications that are only temporary in their effect.

Section 56: Criminal procedure time limits: transitional and saving provision

206. This section prevents modifications made by section 55 of this Act, and paragraphs 20 and 22 of this Act’s schedule, from affecting criminal proceedings that are already underway when those modifications come into effect on 1 October 2022 (see section 59,

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which deals with commencement arrangements). The modifications in question relate to certain time limits in criminal proceedings.

207. This section further provides that the modifications temporarily made to time limits in criminal proceedings by certain provisions of the Coronavirus (Scotland) Act 2020 continue to apply in relation to proceedings underway on 1 October 2022, despite that Act expiring. The cumulative effect of the section is to ensure that the rules on time limits which applied when criminal proceedings got underway stay the same throughout those proceedings, unaffected by changes made by this Act or the expiration of changes made by the 2020 Act.
208. References in the preceding paragraphs to a criminal case getting underway mean the accused first being brought before a court after being served with the document indicating the charges the accused is facing. In the context of summary proceedings, that document is called a complaint. In the context of solemn proceedings, that document is called a petition (although, to be clear, the document that specifies the offences that an accused is formally being charged with in solemn procedure is served later in the process and is called an indictment).

Section 57: Effect of early release from prison or young offenders institution by virtue of regulations

209. This section makes provision in connection with the temporary provision in Part 7 of the schedule, and the temporary provision which preceded that in paragraphs 19 and 20 of schedule 4 of the Coronavirus (Scotland) Act 2020.
210. The temporary provisions in question allow regulations to be made authorising people's early release from prisons and young offenders institutions. In order to deal with the consequences of their release (for example whether they are released on licence or unconditionally), section 57 provides that people released due to regulations are to be treated as though they were released through the normal statutory process that would most likely have been the legal basis for their release had they not been released early under the regulations. Section 57 has to remain the law longer than the temporary power to release people by regulations in order to provide an ongoing basis for understanding the legal basis of those people's release.