These notes relate to the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8) which received Royal Assent on 10 August 2022

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

SCHEDULE: TEMPORARY MEASURES

Part 1: Courts and Tribunals: Conduct of business by electronic means, etc.

Chapter 1: Documents

215. Paragraph 1(1) allows an electronic signature to fulfil any requirement (however expressed and for whatever purpose) that a document mentioned in paragraph 3, or a deletion or correction of it, be signed, initialled or signetted.

216. Paragraph 2(1) makes provision that any requirement (however expressed) that a document of a type mentioned in paragraph 3 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.

217. Paragraph 2(2) sets out certain requirements associated with the electronic transmission of documents, specifying that the transmission must be effected in a manner that the recipient has indicated (either specifically or generally) that they are willing to receive the document. The sub-paragraph further provides that in certain specified circumstances willingness is capable of being inferred.

218. Paragraph 2(3) sets out the interpretation applicable to terms used in paragraph 2.

219. By virtue of paragraph 3(1), paragraphs 1 and 2 apply to orders, warrants, sentences, citations, minutes or any other document produced by a court or tribunal, including any extracts of them. These paragraphs also apply to any document which is required by law be given to a person in connection with any civil or criminal proceedings before a court or tribunal, which includes documents required to initiate proceedings, and documents used as, or to certify, evidence.

220. Paragraphs 3(2) and (3) confer a power on the Lord President or the Lord Justice General to direct that the effects of paragraphs 1 and 2 do not apply to a specified type of document, either in relation to some or all proceedings.

221. Paragraph 4 allows a requirement to give notice for the purpose of legal proceedings to be fulfilled by giving notice on the Scottish Courts and Tribunals Service's website rather than by posting a physical notice inside or outside a court building.

222. Paragraph 5 sets out the interpretation applicable to terms used in this Chapter.

Chapter 2: Attending a court or tribunal

Overview of Chapter 2

223. Chapter 2 of Part 1 of the schedule removes, or allows for the removal of, requirements for people to physically attend court or tribunal hearings. Reflecting different default positions on the removal of requirements for physical attendance:

- paragraph 6 deals with non-criminal cases and it also deals with criminal trials and processes before criminal courts in which the only party is a public official
- paragraph 7 deals with criminal cases, apart from trials and processes in which the only party is a public official

224. Where the requirement to physically attend has been removed by paragraph 6 or 7, paragraph 8 requires people to attend virtually instead.

Suspension of requirement for physical attendance in non-criminal proceedings, criminal trials and certain processes

225. Paragraph 6 removes requirements for people to physically attend court or tribunal hearings. It generally makes virtual attendance the default position, with the court or tribunal having an option to order an in-person hearing. But for hearings at which someone is to give evidence, the default position is reversed so that in-person attendance will be required, unless the court specifically directs a person to attend virtually. Paragraph 6(5) sets the test for reversing the default rule by ordering physical attendance at a hearing other than one at which evidence is to be given. It provides that a court or tribunal may only require the physical attendance of a person if allowing the person to attend by electronic means would prejudice the fairness of proceedings, or would otherwise be contrary to the interests of justice.

226. Sub-paragraph (6) sets the test for reversing the default rule by ordering a person's virtual attendance at a hearing at which evidence is to be given. The test is that the court or tribunal must be satisfied that attendance by electronic means would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.

227. Sub-paragraph (7) provides that the power to issue a direction under sub-paragraphs (2) and (4) includes the power to revoke an earlier direction under that sub-paragraph.

228. Sub-paragraph (8) provides that a court or tribunal may issue or revoke a direction under sub-paragraph (2) or (4) on the motion of a party or of its own accord.

229. Sub-paragraph (9) provides that the court or tribunal must, in considering whether to issue or revoke a direction under sub-paragraph (2) or (4), other than a first direction in relation to a hearing, give all parties to the proceedings an opportunity to make representations. It further requires the court or tribunal to have regard to any guidance issued by the Lord President or the Lord Justice General.

230. The first direction under sub-paragraph (2) or (4) in relation to a hearing can be issued without giving the parties an opportunity to make representations first. This means a court or tribunal can initially tell individuals how they are to appear before it. Where a court or tribunal proceeds in that way, sub-paragraph (11) requires it to ensure that parties know they can request the court or tribunal to change the way that it has asked an individual to attend, and if a party makes that request the court or tribunal must consider it before dealing with any substantive matters at the hearing.

231. Sub-paragraph (12) provides that references to physically attending a court or tribunal are to being in a place for the purpose of any "proceedings" (defined in paragraph 11) before a court or tribunal or an office holder of a court or tribunal. The effect of this provision is that applications for warrants, which take place in a judge's chambers, would be included in a reference to physically attending a court or tribunal.

Suspension for requirement for physical attendance in criminal proceedings, excluding trials and certain processes

232. Paragraph 7(2)(a) allows the Lord Justice General to make determinations relieving people from the requirement to attend criminal courts in person. It does not apply in relation to trials, which are instead governed by paragraph 6. Despite a determination by the Lord Justice General generally relieving people from having to attend certain proceedings in person, paragraph 7(2)(b) allows a court to require in-person attendance in an individual case.

233. A determination by the Lord Justice General could, for example, provide that accused persons are to attend sentencing hearings by electronic means. A determination might also empower courts in individual cases to remove the requirement for in-person attendance. A determination can make different provision for different areas, so could be used to pilot virtual attendance in certain localities.

234. Where a person is allowed to attend a hearing virtually because of a determination by the Lord Justice General under paragraph 7(2)(a), sub-paragraph (6) requires the court to ensure that the parties know they can request the court to direct the person to attend in person instead, and requires the court to deal with that request before any substantive matter at the hearing.

Attending by electronic means

235. Paragraph 8(1) provides that a person excused from a requirement to physically attend a court or tribunal must instead appear by electronic means in accordance with a direction issued by the court or tribunal.

236. Sub-paragraph (2) provides that where a person fails to attend by electronic means in accordance with such a direction, they are to be regarded as having failed to comply with the requirement to physically attend from which they were excused under paragraph 6 or 7.

237. Sub-paragraph (3) provides that a court or tribunal may vary or revoke a direction made under sub-paragraph (1).

238. Sub-paragraph (4) provides that a direction is to set out how a person is to appear by electronic means before the court, tribunal or office holder, and may include any other provision the court or tribunal considers appropriate.

239. Sub-paragraph (5) provides that a court or tribunal may issue a direction under sub-paragraph (1) on the motion of a party or of its own accord.

240. Sub-paragraph (6) provides that before issuing a direction under sub-paragraph (1), other than a first direction in relation to a hearing, the court or tribunal must give all parties an opportunity to make representations. It further requires the court or tribunal to have regard to any guidance issued by the Lord President or the Lord Justice General.

241. Sub-paragraph (8) provides that, where an initial direction under sub-paragraph (1) has been issued in relation to a hearing without giving the parties an opportunity to make representations first, the court or tribunal must ensure the parties know that they can request that a different direction be made and, if such a request is made, the court or tribunal has to deal with it before any other substantive issue.

242. Sub-paragraph (9) provides that a direction under sub-paragraph (1) must ensure that a party to trial proceedings, which includes an accused person, uses electronic means that enables the party to both see and hear all of the other participants in a hearing, including any witness who is giving evidence. A direction to a witness who is giving evidence at a trial using electronic means must enable all of the other participants in the trial, which includes an accused person, to both see and hear the witness. Any direction by a court or tribunal which is not in relation to trial proceedings sets no specific requirements.

243. Sub-paragraph (10) provides that nothing in sub-paragraph (8) 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, such as special measures in relation to a vulnerable witness, would otherwise prevent.

General directions under paragraph 8

244. Paragraph 9(1)(a) allows a court or tribunal to issue a general direction under paragraph 8(1) that applies to all proceedings of a specified type, provided that the only party to such proceedings is a public official. This would allow a court, for example, to issue a direction as to how applications for search warrants should be made by the procurator fiscal. Paragraph (b) allows a court or tribunal to issue a further direction overriding a general direction issued under paragraph (a) in individual cases. The requirement to give parties the opportunity to make representations under paragraph 8(6)(a) in relation to a general direction issued by virtue of sub-paragraph (1)(a) is disapplied.

Chapter 3: Further provision

Publication of directions and guidance

245. Paragraph 10 requires the publication of certain directions and guidance.

Transitional provision for directions under earlier enactment

246. Paragraph 11 provides that any direction made under a provision of schedule 4 of the Coronavirus (Scotland) Act 2020 specified in sub-paragraph (1) or paragraph 4(1)(a) of schedule 4 of that Act is to be treated as having been made under the corresponding provision of this Act.

Interpretation of Part

247. Paragraph 12 provides definitions for words and terms used in the other paragraphs of Part 1 of the schedule.

Part 2: Fiscal fines

248. Paragraph 13(2) makes similar provision to the temporary modifications to the Criminal Procedure (Scotland) Act 1995 and the Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 (S.S.I. 2008/108) made by paragraph 7 of schedule 4 of the Coronavirus (Scotland) Act 2020. It provides that the maximum available fixed penalty that may be offered by the procurator fiscal under section 302 of the 1995 Act is £500. Prior to the temporary modifications made by the Coronavirus (Scotland) Act 2020, the maximum penalty was £300.

249. Paragraph 14(2) substitutes the scale of fixed penalties in S.S.I. 2008/108 with a new scale. This scale is different to the scale that operated by virtue of the Coronavirus (Scotland) Act 2020. The main difference is that although the maximum penalty is the same there are now 9 levels instead of 7. The amounts in levels 1 to 7 are identical to the scale that operated prior to the temporary modifications made by the Coronavirus (Scotland) Act 2020 (i.e. £50 to £300). The 2 additional levels provide for the amounts of £400 and £500.

Part 3: Failure to appear before court following police liberation

250. Paragraph 15(1) makes provision which enables the court to prevent the expiry of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 when certain conditions are met.

251. Sub-paragraph (2) makes a consequential amendment to section 29(1)(a) of the Criminal Justice (Scotland) Act 2016 by introducing reference to new section 29A.

252. Sub-paragraph (3) inserts a new section 29A into the Criminal Justice (Scotland) Act 2016, which deals with expiry of undertakings. The new section 29A enables the court to modify the terms of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 by changing the time at which the person who gave the undertaking is to appear at court where certain conditions are met, as set out in subsection (1). Where the court exercises this power, this has the effect of the undertaking and any conditions attached to it continuing until the newly specified time at which the person is to appear at court.

253. Those conditions are:

- the person has failed to appear at court as required by the terms of the undertaking,
- the court considers that the failure to appear is attributable to a reason related to coronavirus, and
- the court does not consider it appropriate to grant a warrant for the person's arrest on account of the failure to appear.

254. Subsection (2) requires the procurator fiscal to give notice, as soon as reasonably practicable, to the person who gave the undertaking that the terms of the undertaking have been modified, where the court makes such an order under subsection (1).

255. Subsection (3) prescribes the manner in which notice under subsection (2) must be effected and provides that the same requirements as in section 141 of the Criminal Procedure (Scotland) Act 1995 apply. This includes delivering the notice personally or leaving it at the person's home.

256. Subsection (4) provides that the references in subsection (1) to the terms of the undertaking include those modified by the procurator fiscal under section 27(1) of the Criminal Justice (Scotland) Act 2016.

257. Subsection (5) provides that a reference in any enactment to the modification of the terms of an undertaking made by the procurator fiscal under section 27(1) is to be treated as including modification by the court under subsection (1).

Part 4: National jurisdiction for first callings from custody, etc.

Ability to take first calling in any sheriff court and then maintain proceedings

258. Paragraph 16 provides that, where a person appears in court for the first time from custody in criminal proceedings, that calling of the case may be taken in any sheriff court in Scotland and may be dealt with in that court by a sheriff of any sheriffdom. Paragraph 18 goes on to ensure that when a court is dealing with a case for which it would not normally have territorial jurisdiction, the sheriff and the prosecutor have all the same powers to deal with it as they would if it were a case that fell within their normal territorial jurisdiction.

259. If more than one person is the subject of criminal proceedings, paragraph 16(3) allows the case to call before a court that would not normally have jurisdiction for the case provided that any one of the people who are the subject of the proceedings is in custody in connection with it. This means, for example, that a case in which two people are co-accused of committing a crime can call before a court that would not normally have jurisdiction for the case even although only one of them has been arrested for the crime and is therefore appearing from custody.

260. Paragraph 16(4) makes it the choice of the Lord Advocate or the procurator fiscal whether or not to rely on subsection (1) to call a case before a court that would not normally have jurisdiction to take it.

261. Paragraph 16(5) allows a sheriff court that has taken on the initial calling of a case by virtue of sub-paragraph (1) to continue dealing with it.

262. The continuing jurisdiction created by sub-paragraph (5) for criminal proceedings can continue until the proceedings' end, except in the case of a prosecution where the jurisdiction for the proceedings (or part of them) may come to an early end under sub-paragraph (6). Sub-paragraph (6) will end a court's jurisdiction for a prosecution in two situations:

- The first is where the accused pleads not guilty and the prosecutor does not accept that plea. This means it is likely that the case will go to trial, which will be handled by the court that has normal territorial jurisdiction for the case. If an accused is charged with, say, two offences and pleads guilty to one and not guilty to the other, the continuing jurisdiction that sub-paragraph (5) creates over the proceedings will be lost only insofar as the proceedings relate to the charge to which the accused has pled not guilty. The court that has jurisdiction by virtue of sub-paragraph (5) would therefore be able to deal with the guilty plea as it sees fit, including by sentencing the accused for that.

- The second point at which sub-paragraph (6) will end a court's non-territorial jurisdiction for a case is when the accused is committed until liberated in due course of law, which means that the court has ordered the accused be held in prison while solemn proceedings (see paragraph 264) are ongoing.

263. Paragraph 16(7) provides for proceedings on indictment that follow from proceedings on petition to be treated as the same proceedings. In solemn criminal procedure (which is the procedure used for the most serious crimes), cases usually begin with a petition and then progress to an indictment, which sets out the formal charges against the accused. Paragraph 16(7) means that a court which began dealing with a case at the petition stage can continue dealing with it, under sub-paragraph (5), once it has reached indictment stage. In practice, because jurisdiction under sub-paragraph (5) ends with an accused being fully committed for trial, which marks one way the petition stage can end, the effect of sub-paragraph (7) is likely to be relevant only where an accused makes an early guilty plea under section 76 of the Criminal Procedure (Scotland) Act 1995.

Ability of any sheriff court to deal with proceedings following failure to appear

264. Paragraph 17 allows a sheriff court to deal with prosecution proceedings for which it would not normally have jurisdiction where the accused has come before it having been arrested for a failure to appear in those prosecution proceedings.

265. When an accused person fails to appear in court, the court can grant a warrant for the accused's arrest. On arrest the person will be brought before a court as soon as is practicable. That court appearance will be a form of "ancillary proceedings" within the meaning of paragraph 19(1)(d) and therefore any sheriff court can deal with it by virtue of paragraph 16(1). The ancillary proceedings for failing to appear are separate from the main prosecution proceedings. If the person had been brought before the court that had normal territorial jurisdiction for the main prosecution proceedings, the court might have dealt with them as well as the proceedings for the person's failure to appear. Paragraph 18 allows a court that has jurisdiction to deal with the ancillary proceedings to deal with the prosecution proceedings in the same way that the court with normal territorial jurisdiction would. In most cases that will mean rescheduling diets in light of a hearing having been missed when the accused failed to attend, but in the case of summary proceedings if the accused pleads guilty it may include sentencing the accused or ordering reports ahead of sentencing.

Further provision about extra-territorial jurisdiction

266. As mentioned in the preceding paragraphs, paragraph 18 supports paragraphs 16 and 17 by ensuring that sheriffs and prosecutors have the necessary powers to deal with cases that come before a court by virtue of those paragraphs. It also makes clear that paragraphs 16 and 17 supplement, rather than supersede, other legal bases for a sheriff court taking a case from outwith its normal territorial jurisdiction.

Part 5: Criminal procedure time limits

Chapter 1: Extension of periods

Solemn proceedings: periods within which procedural hearings and trial must commence

267. Paragraph 20 makes provision to temporarily extend certain statutory time limits contained in the Criminal Procedure (Scotland) Act 1995 relating to criminal proceedings, making similar provision to the temporary modifications made by paragraph 10 of schedule 4 of the Coronavirus (Scotland) Act 2020 and paragraph 1 of schedule 2 of the Coronavirus (Scotland) (No.2) Act 2020.

268. Sub-paragraph (2) amends section 65 of the Criminal Procedure (Scotland) Act 1995, which applies certain time limits in respect of solemn trials, by increasing the time limit within which a preliminary hearing or a first diet must be commenced following the first appearance of an accused from 11 months to 17 months and the time limit within which the trial must commence following that first appearance from 12 months to 18 months.

269. If the preliminary hearing, or (as the case may be) first diet or trial are not commenced within the respective periods, the accused must be discharged from any indictment in respect of the offence and must not at any time be proceeded against on indictment in respect of that offence. The periods mentioned may still be extended under section 65(3) or on appeal under section 65(8) or under section 74(4)(c).

Summary proceedings: period within which prosecution for statutory offence must commence

270. Paragraph 21 modifies section 136(1) of the Criminal Procedure (Scotland) Act 1995 to extend the time limit concerning summary proceedings specified in subsection (1) of that section by 6 months. It has the effect that the time limit for the commencement of proceedings for any statutory offence triable only summarily, unless the enactment fixes a different time limit, is 12 months from the date of the alleged commission of the offence.

Pre-trial and pre-sentence remand period

271. Paragraph 22 modifies section 65 of the Criminal Procedure (Scotland) Act 1995 to extend each of the time limits specified in subsection (4) of that section by 180 days. It has the effect that an accused who is remanded in custody in connection with an offence in solemn proceedings must not be detained for a total period of more than—

- 260 days, unless within that period an indictment is served on the accused, failing which the accused will be entitled to bail, and
- where an indictment has been served on the accused—
- 290 days, unless a preliminary hearing (High Court cases), or a first diet (Sheriff Court cases) is commenced within that period, failing which the accused will be entitled to bail,
- 320 days, unless the trial of the case is commenced within that period, failing which the accused will be entitled to bail.

272. The periods mentioned above may still be extended under section 65(5) or on appeal under section 65(8).

273. Sub-paragraph (3) modifies section 147 of the Criminal Procedure (Scotland) Act 1995 to extend the time limit concerning summary proceedings specified in subsection (1) of that section by 90 days. It has the effect that an accused who is remanded in custody charged in connection with an offence in summary proceedings must not be detained

for a total period of more than 130 days after the bringing of the complaint in court unless the trial has commenced within that period, failing which the accused must be released and discharged for ever in connection with the offence. The period may still be extended under section 147(2), or on appeal under subsection (3) of that section.

274. Sub-paragraph (4) modifies section 200 of the Criminal Procedure (Scotland) Act 1995 which provides the court with a power to adjourn a case and remand the accused in custody where the accused has been found to have committed an offence punishable by imprisonment. This is to enable inquiry to be made into the accused's physical or mental condition. Sub-paragraph (4) removes the 3-week time limit for any single adjournment. The effect of this is that the court can adjourn the case for whatever period the court thinks necessary to enable a medical examination and report to be made.

Chapter 2: Adjournment periods

Power of court to adjourn cases

275. Paragraph 23 makes a series of temporary modifications to the Criminal Procedure (Scotland) Act 1995 concerning the power of the court to adjourn cases.

276. Sub-paragraph (2) modifies section 145, which provides the court with a power to adjourn a summary case at first calling for inquiry into the case, or for any other cause it considers reasonable for such period as it considers appropriate. It removes subsection 145(3) which provides that, where the accused has been remanded on bail or ordained to appear, no single period of adjournment shall exceed 28 days. The effect of this is that the court can adjourn a hearing of such a case for such a period as the court considers appropriate, without this limitation.

277. Sub-paragraph (3) modifies section 145A, which provides the court with a power to adjourn a case at first calling in a summary case where the accused is not present, to allow the accused to appear in answer to the complaint, or time for inquiry into the case, or for any other cause the court considers reasonable. It removes section 145A(3) which provides that no single period of adjournment shall exceed 28 days. The effect of this is that the court can adjourn a hearing of such a case for such a period as the court considers appropriate, without this limitation.

Part 6: Proceeds of Crime

278. Paragraph 24 temporarily modifies the Proceeds of Crime Act 2002 to make clear that coronavirus-related reasons are valid reasons for allowing the confiscation-order making process to be postponed.

279. A confiscation order is an order under section 92 of the Proceeds of Crime Act requiring a person convicted of an offence to pay a sum of money representing the person's benefit from crime. The court can either make a confiscation order before it sentences the person, or it can postpone doing so under section 99 of the Proceeds of Crime Act. Section 99 provides that the process for making a confiscation order cannot, ordinarily, be postponed for more than 2 years beginning from the time that the person is convicted. However, if the court is satisfied that there are exceptional circumstances in a case, it can postpone the process for more than 2 years.

280. It is up to the courts to decide what exceptional circumstances are. Paragraph 24 temporarily inserts a new subsection (4A) into section 99 of the Proceeds of Crime Act to make clear that the direct and indirect effects of coronavirus can constitute exceptional circumstances. An example of a direct effect would be where people involved in the order-making process are too stricken with coronavirus for the process to conclude before the 2 years expire. An example of an indirect effect would be the availability of court diets due to pressures on court timetables as a result of the disruption to court business caused by the pandemic and difficulties in obtaining the necessary court documentation required to progress confiscation hearings.

Part 7: Prisons and young offenders institutions

281. Paragraphs 25 and 26 make provision in similar terms to that found in paragraphs 19 and 20 of schedule 4 of the Coronavirus (Scotland) Act 2020.

282. Associated provision is made by section 57.

Power to release early

283. Under paragraph 25, the Scottish Ministers are given the power to make regulations to release people from prisons and young offenders institutions early. For these purposes, a "prison" does not include a naval, military or air force prison.

284. Regulations may only be made if the Ministers are satisfied that making them is a necessary and proportionate response to the effects, or anticipated effects, of coronavirus on a prison or on prisons generally. The regulations must be for the purpose of protecting the security and order of the prison concerned or protecting the health, safety and welfare of those accommodated or working in the prison.

285. In addition, there are restrictions upon who can benefit from the regulations. A person may not be released under the regulations more than 180 days earlier than the person would otherwise be due for release. A person is also not to be released under the regulations if the governor of the prison concerned considers the person to pose an immediate risk of harm to another identified person. Further, a person may not be released if the person falls within one of the categories specified in sub-paragraph (5). Those ineligible include:

- people who are not serving determinate sentences (for example, a person sentenced to life imprisonment, or where no limit of time has been specified),
- people sentenced to an extended sentence for sexual, violent or terrorism offences,
- people who have been made subject to a supervised release order in order to protect the public from serious harm upon the person's release or who are subject to notification requirements under the Sexual Offences Act 2003,
- people sentenced for domestic abuse offences, and
- people who are in prison for reasons other than having been sentenced, such as those who are awaiting trial or who are being detained ahead of potentially being deported.

286. Regulations under this paragraph may make different provision for different purposes, meaning that the rules can, for example, differentiate between categories of prisoner, types of prison or parts of a prison.

Parliamentary scrutiny and expiry of regulations made under paragraph 25

287. Paragraph 26 makes provision about the parliamentary procedure which applies to the making of regulations under paragraph 25 and about the automatic expiry of any regulations made under that power.

288. Specifically, regulations are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) unless they are made under the bespoke procedure which is provided for by sub-paragraph (3). That procedure is available only where the regulations include a declaration that in the Scottish Ministers' opinion the regulations need to be made so urgently that parliamentary approval of them in draft cannot be waited for.

289. Where that condition is met, the regulations can be made and come into force immediately under the made-affirmative procedure. They must be laid before the Scottish Parliament as soon as practicable after being made, and will cease to have effect

if the Parliament does not approve them within 28 days (excluding days during which the Parliament could not approve the regulations because it is dissolved or in recess for a period of more than 4 days). In addition, the Scottish Ministers must explain their reasons for thinking that the situation is so urgent that the regulations need to be made in accordance with the made-affirmative procedure provided for by sub-paragraph (3).