

# **CORONAVIRUS (SCOTLAND) ACT 2020**

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## **EXPLANATORY NOTES**

### **DETAIL ABOUT PROVISIONS**

#### ***Advancement of equality and non-discrimination***

9. Section 9 provides that the Scottish Ministers must have regard to opportunities to advance equality and non-discrimination when exercising the functions contained in Part 1 of the Coronavirus (Scotland) Act.

#### ***Ancillary provision***

10. Section 10 provides that powers to make subordinate legislation conferred by Part 1 of the Act (which includes schedules 1 to 7) include the power to make ancillary provision.

#### ***Suspension, revival and expiry of the provisions of the Act***

11. Section 11 provides the Scottish Ministers with a power, by regulations, to suspend the effect of any provision in Part 1 of the Act, and also to revive the effect of any suspended part. This power allows any provision which is no longer, in the view of the Scottish Ministers, appropriate or proportionate, but which may become necessary to use again, to be temporarily suspended.
12. Section 12 provides for Part 1 of the Act to expire on 30 September 2020, unless the Scottish Parliament approves regulations providing for its effect to continue until 31 March 2021. If the Scottish Parliament does approve such regulations, it may then approve regulations allowing one further, final extension until 30 September 2021, at which point any remaining provisions in the Act will expire.
13. Subsection (9) of section 12 allows the Scottish Ministers, by regulations, to make transitional, transitory or saving provision in connection with the expiry of provisions of the Act. This will allow, for instance, the status in law of anything done under the provisions of the Act while it is in effect to be clarified if necessary for the period after the Act expires.
14. Section 13 allows the Scottish Ministers, by regulations, to cause any provision in Part 1 of the Act to expire earlier than set out above, where they and the Scottish Parliament are satisfied that the provisions are no longer appropriate or proportionate.

#### ***Reporting***

15. Section 15 requires the Scottish Ministers to keep the necessity of the provisions in Part 1 of the Act under review, and to report every two months on their assessment of that necessity, on the status of the provisions of the Act, and on the use of the powers in the Act.
16. Section 16 gives the Scottish Minister the power, by regulations, to make ancillary provision for the purposes of, or in connection with, giving full effect to the Act.

17. Section 17 sets out how the Act will be commenced. With one exception, the Act comes into force on the day after Royal Assent.

### ***Schedule 1 – eviction for dwelling-houses***

#### **Private residential tenancies: eviction grounds to be discretionary**

18. Subparagraph 1 of paragraph 1 of schedule 1 provides that the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) applies, in relation to a notice to leave within the meaning of section 62 of the 2016 Act, as modified by paragraphs 1 and 2 of schedule 1 during the period that the Coronavirus (Scotland) Act 2020 is in force (“the relevant period”). Subparagraph 2 of paragraph 1 modifies paragraph 51(2) of the 2016 Act to provide that the grounds for eviction under schedule 3 of the 2016 Act are each to be made discretionary during the relevant period. Subparagraph (3) makes changes to existing mandatory grounds of eviction to enable the Tribunal to consider the reasonableness of making an eviction order in each case during the relevant period.

#### **Private residential tenancies: extension of notice periods**

19. Paragraph 2 provides that during the relevant period, the length of time that a landlord must give a tenant when issuing a notice to leave under paragraph 62 of the 2016 Act is extended. The exact length of notice will depend on the grounds for repossession used by the landlord.
20. Subparagraph (2) of paragraph 2 inserts new subsections (2), (3) and (3A) into section 54 of the 2016 Act during the relevant period. Accordingly, during the relevant period, the period of notice in relation to a notice to leave under the 2016 Act is either 28 days, three months or six months. The period begins on the day on which the tenant receives the notice from the landlord. Subparagraph (3) provides that if the only ground stated is that the tenant is not occupying the let property then the 28 days’ notice will apply.
21. In terms of subsection (3A), a notice period of 3 months applies if only a ground or grounds listed in that subsection are stated in the notice to leave or where a ground or grounds listed in that subsection are stated in the notice to leave alongside the ground that the tenant is not occupying the let property as their home. The grounds listed in subsection (3A) are that the property is being repossessed because the landlord or a family member intends to live in the let property; the tenant has a relevant conviction, engaged in antisocial behaviour, or the tenant associates with a person who has done so; the landlord is not registered with a relevant local authority or does not hold a House in Multiple Occupation license. Where neither subsection (3) nor (3A) applies, the notice period will be six months.
22. Subparagraph (3) of paragraph 2 substitutes section 64 of the 2016 during the relevant period. The substituted section 64 provides that with the exception of the references to six months in section 59 in the 2016 Act, any reference to a period of six months or three months in Part V of the 2016 Act means either the same day six months after the month in which it began or, if the month in which the period ends has no such day, the final day of that month. For example if the start of the six month period was 4 February the last day of the six month period would be 4 August, and if the start date was 31 August the last day would be 28 or 29 February, depending on whether or not it was a leap year.

#### **Assured tenancies: eviction grounds to be discretionary**

23. Paragraph 3 modifies the Housing (Scotland) Act 1988 (“the 1988 Act”) during the relevant period and provides that a notice under section 19 (notice of proceedings for possession) of section 33(1)(d) (notice of recovery of possession of short assured tenancy) of that Act has effect as if the 1988 Act was modified in accordance with this paragraph.

24. Subparagraphs (2) and (3) of paragraph 3 make modifications to the 1988 Act to provide that during the relevant period the Tribunal is to consider the reasonableness of making an eviction order in relation to all grounds for repossession. Subparagraph 4 of paragraph 3 modifies section 33 of the 1988 Act in relation to recovery of possession on termination of a short assured tenancy to provide repossession is discretionary and that the Tribunal is to consider the reasonableness of making an eviction order in the relevant period.

**Assured tenancies: extension of notice periods**

25. Paragraph 4 modifies the Housing (Scotland) Act 1988 during the relevant period and provides that a notice under section 19 (notice of proceedings for possession) or section 33(1)(d) (notice of recovery of possession of short assured tenancy) of that Act has effect as if the 1998 Act was modified in accordance with this paragraph.
26. Subparagraph (2) of paragraph 4 modifies section 19 of the 1988 Act during the relevant period. In terms of the substituted section 19(4), the notice of proceedings for possession must be served two months, three months or, as the case may be, six months before proceedings commence. The minimum period of notice which will apply will depend on the grounds for repossession used by the landlord, as outlined in substituted section 19(4).
27. Subparagraph (3) of paragraph 4 modifies section 33 of the 1988 Act to provide that, during the relevant period, a notice of recovery of possession in relation to a short assured tenancy is required to be given to the tenant by the landlord at least six months before the Tribunal may make an order for possession.

**Tenancies under the Rent (Scotland) Act 1984: eviction grounds to be discretionary**

28. Paragraph 5 modifies the Rent (Scotland) Act 1984 (“the 1984 Act”) during the relevant period and provides that a notice under section 112 (notice to quit) of that Act has effect as if that Act was modified in accordance with this paragraph. Subparagraphs (2) to (4) make modifications to the 1984 Act to provide that during the relevant period the Tribunal is to consider the reasonableness of making an eviction order in relation to all grounds for repossession.

**Tenancies under the Rent (Scotland) Act 1984: extension of notice periods**

29. Paragraph 6 modifies the Rent (Scotland) Act 1984 during the relevant period and provides that a notice under section 112 (notice to quit) of that Act has effect as if that Act was modified in accordance with this paragraph.
30. Subparagraph (2) of paragraph 6 modifies section 14 of the 1984 Act during the relevant period to amend the time frame within which the landlord can make an application for repossession in relation to a short tenancy under the 1984 Act. Such an application can be made not less than six, nor more than nine, months after the landlord has served a notice of intention to apply for repossession.
31. Subparagraph (3) of paragraph 6 modifies section 112 of the 1984 Act during the relevant period. In terms of modified section 112, a notice to quit given by the landlord must be given to the tenant not less than the specified amount of time before the date on which it is to take effect. The specified amount of time depends and will be either 4 weeks, 3 months or 6 months depending on what basis the landlord issues the notice to quit, as outlined in new subsections (1A) to (1E), inserted into section 112 of the 1984 Act by subparagraph 3(b) of paragraph 6.

### **Scottish secure tenancies: extension of notice periods**

32. Paragraph 7 sets out the provisions in the Housing (Scotland) Act 2001 (“the 2001 Act”) which are modified in relation to a notice of proceedings form issued under section 14(2)(a) or section 36(2)(a) of that Act during the relevant period.
33. Subparagraph (2) of paragraph 7 changes the earliest date that proceedings for recovery of possession can be raised under section 14(4)(b)(i) of the 2001 Act from 4 weeks from the date of service of the notice to a date calculated in accordance with subsections (4A), (4B) or (4C) subject to which section 14 of the 2001 Act is to have effect.
34. Subparagraph (2) provides that the 2001 Act is to be read as if a new subsection (4A) were inserted into section 14 of the 2001 Act during the relevant period. New subsection (4A) modifies the earliest date on which proceedings for recovery of possession can be raised from the current 4 weeks after the date a notice of proceedings is served to 3 months where the ground for recovery of possession is specified in paragraph 2, 6, 7 or 8 of schedule 2 of the 2001 Act. Where paragraph 5 of schedule 2 is also specified in the notice the earliest date proceedings can be raised is 3 months. It also has the effect of modifying the earliest date on which proceedings for recovery of possession can be raised from the current 4 weeks after the date a notice of proceedings is served to 6 months in cases where the ground for recovery of possession is set out in paragraph 1, 3, 4 or 9 to 12 of schedule 2 of the 2001 Act. The 6 month date applies whether or not any other grounds are also specified in the notice.
35. Subparagraph (3) of paragraph 7 modifies section 36 of the 2001 Act during the relevant period. It has the effect of modifying the earliest date that proceedings for recovery of possession can be raised under section 36 for short Scottish secure tenancies which are at the end of their term from the current 2 months to a date calculated in accordance with section 36(3A), (3B) and (3C) subject to which section 36 of the 2001 Act is to have effect.
36. Subparagraph (3) provides that the 2001 Act is to be read as if a new subsection (3A) were inserted into section 36 and which modifies the date on which proceedings for recovery of possession can be raised from the current 2 weeks after the date a notice of proceedings is served to 6 months where the tenancy was given under one of the grounds at paragraphs 3 to 7A of schedule 6 of the 2001 Act. The date on which proceedings for recovery of possession can be raised for short Scottish secure tenancies given under section 35, or paragraphs 1, 2 or 2A of schedule 6 of the 2001 Act remains at 2 months.
37. Subparagraph (3) also modifies section 36(8) of the 2001 Act during the relevant period to provide that the date that proceedings for recovery of possession can be raised for a short Scottish secure tenancy when section 14(4) of the 2001 Act is being used to recover possession is equivalent to the timescales which apply in accordance with the modifications for Scottish secure tenancies.

### **Power to modify notice periods**

38. Paragraph 8 provides a power for the Scottish Ministers, exercisable by negative procedure, to modify the length of any period of notice specified to apply during the relevant period. In exercising this power, the Scottish Ministers cannot specify a notice period which is longer than 6 months.

### **Consequential modifications in relation to prescribed forms**

39. Paragraph 9 makes consequential modifications to prescribed forms as a result of the changes made by paragraphs 1 to 8 which will apply during the relevant period. Consequential modifications are made to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ([S.S.I. 2017/297](#)), the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017 ([S.S.I. 2017/349](#)) and the Short Scottish Secure Tenancies (Proceedings for Possession) Regulations 2018 ([S.S.I. 2018/155](#)).

## **Errors in notices**

40. Paragraph 10 provides that where a landlord has completed a notice which does not take proper account of paragraphs 1 to 9 and therefore relies on the wrong notice period, such notice is not invalid but can only be relied upon by that landlord to seek eviction in accordance with the correct notice period. Subparagraph (2) provides that the period for which that notice remains in force is also calculated with reference to the correct notice period. Subparagraph (3) specifies the notices to which paragraph 10 applies.

## ***Schedule 2 - temporary extension of moratoriums on diligence***

41. Schedule 2 increases the length of the moratorium against diligence created by sections 195 to 198 of the Bankruptcy (Scotland) Act 2016, the Act that consolidated previous bankruptcy legislation, from 6 weeks to a period of 6 months, for moratoriums established during the period covered by this emergency legislation. The provisions also remove the prohibition against benefitting from more than one moratorium in any 12 month period, so those who have recently had a moratorium are not excluded from the effect of the changes.
42. Paragraphs 2 and 3 together remove the restriction that only one moratorium can be applied for in any one 12 month period.
43. Paragraph 4(a) extends the period of the moratorium from 6 weeks to 6 months, and paragraph 4(b) makes one consequential change to the arrangements for those in a moratorium who then enter a protected trust deed.

## ***Schedule 3 - Children and vulnerable adults***

### **Part 1 - Children**

#### **Requirements as to members of children's hearings**

44. Section 5 of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") provides that a children's hearing must consist of three members of the Children's Panel. Section 6 provides that the National Convener of Children's Hearings Scotland must ensure that the children's hearing includes both male and female members. Section 79 requires a pre-hearing panel to consist of three members.
45. Paragraph 1(2) of schedule 3 modifies section 5 of the 2011 Act to provide that a children's hearing can consist of fewer than three members where it is not practicable for a hearing to consist of three members.
46. Paragraph 1(3) modifies section 6 of the 2011 to provide that the duty to include both male and female members applies so far as practicable.
47. Paragraph 1(4) modifies section 79 of the 2011 Act to provide that a pre-hearing panel may consist of fewer than three members where it is not practicable for the panel to consist of three members.
48. Subparagraphs (5) to (9) of paragraph 1 make consequential modifications to references in other legislation to panel members.

#### **Child assessment and child protection orders**

49. Section 35 of the 2011 Act provides for the local authority to apply to the sheriff for a child assessment order authorising an assessment to be made of a child's health or development or of the way in which the child has been or is being treated or neglected. Section 35(5) provides that the period during which the order has effect must begin no later than 24 hours after the order is granted, and must not exceed three days.

50. Paragraph 2(2) of schedule 3 of the Act modifies section 35(5) of the 2011 Act so that the period during which the order has effect must begin no later than 48 hours after the order is granted, and must not exceed 5 days.
51. Under section 37 of the 2011 Act, a person can apply to the sheriff for a child protection order (“CPO”) to authorise the taking of certain steps in order to protect a child, such as the taking of a child to a place of safety or preventing the removal of a child from a place. Where a CPO is in force in respect of a child authorising such steps, sections 45 and 46 of the 2011 Act provide for the review of such a CPO by a children’s hearing which must be held on the second working day after the day on which the child is taken to the place of safety or, where the CPO prevents removal of a child, the day on which the CPO is made (referred to as a “second working day hearing”). Section 47 of the 2011 Act enables the children’s hearing to continue, vary or terminate the CPO.
52. Section 48 of the 2011 Act provides that certain persons can make an application to the sheriff to vary or terminate a CPO before commencement of the second working day hearing or, if that hearing has continued the CPO, within 2 working days of the hearing. The sheriff must then determine the application in accordance with section 51.
53. Although under section 53 of the 2011 Act, the Principal Reporter has the power to terminate or vary a CPO, subsection (4) provides that this power does not apply if a children’s hearing arranged under section 45 or 46 has commenced or proceedings before a sheriff under section 48 have commenced.
54. Section 54 provides that a CPO will cease to have effect after a maximum period of 8 working days from the day on which the child is taken to a place of safety or, where the CPO prevents removal of a child, from the day on which the CPO is made. Commencement of a children’s hearing arranged under section 69 or the Principal Reporter giving notice of a decision to not proceed to a children’s hearing will result in earlier termination of the CPO.
55. Subparagraphs (3) to (5) of paragraph 2 respectively repeal (temporarily) sections 45 to 47 of the 2011 Act and the requirement to hold a second working day hearing and modify the timescales for an application for its variation or termination under section 48 and its determination by the sheriff under section 51. Paragraph 2(6) makes a consequential modification to section 53(4) of the 2011 Act. Paragraph 2(7) provides that these modifications of the 2011 Act do not apply in relation to a CPO made before these provisions come into force.

### **Maximum period for which a compulsory supervision order has effect**

56. Under section 83(1) of the 2011 Act, a compulsory supervision order is an order authorising certain measures in relation to a child (subsection (2)) which must be implemented by a specified local authority. Section 83(7) of the 2011 Act provides that a compulsory supervision order ceases to have effect, if it has not been continued, the day one year after the day on which the order is made, or the day on which the child attains the age of 18 years (if earlier). Where the order has previously been continued, it expires at the end of the period for which the order was last continued, or on the day on which the child turns 18 (if earlier). Section 133 requires the Principal Reporter to initiate a review of a compulsory supervision order where the order will expire within 3 months and would not otherwise be reviewed before it expires.
57. This means a child’s order could lapse if an order was not able to be reviewed and continued within the period referred to in section 83(7).
58. Paragraph 3(2) of schedule 3 modifies section 83 of the 2011 Act to provide that no compulsory supervision order shall lapse if its original end date has passed, except where it has not otherwise been reviewed and continued within 6 months of its expiry date.

59. This means that if an order has not been continued within its current lifespan, the order will not expire, unless the child has attained the age of 18 years.
60. Paragraph 3(3) modifies section 133 of the 2011 Act to provide that the Principal Reporter must initiate a hearing as soon as practicable.
61. Paragraph 3(4) provides that the modifications in paragraphs 3(2) and (3) apply to a compulsory supervision order (as defined in paragraph 3(5)) which was in effect the day before paragraph 3 comes into force or any such order which is made on or after that date.

**Maximum period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect**

62. Sections 86(3) and 140(4) of the 2011 Act stipulate the maximum period for which respectively an interim compulsory supervision order or an interim variation of a compulsory supervision order has effect, whether such an order is made by a children's hearings or by a sheriff. In relation to both types of order, this is currently for a maximum period of 22 days beginning on the day on which the order is made.
63. This means that a children's hearing or court can issue an interim order for 22 days which will lapse if it is not renewed within that timescale (although certain other events, such as the next children's hearing arranged in relation to the child taking place, can cause the interim order or variation to cease to have effect earlier than this).
64. Subparagraphs (2) and (3) of paragraph 4 respectively modify sections 86(3) and 140(4) of the 2011 Act to provide that the maximum period for which an interim compulsory supervision order or an interim variation of compulsory supervision orders has effect is:
- where the order is made by a children's hearings, the period of 44 days, or
  - where the order is made by a sheriff, such other period as the sheriff may specify.
65. Paragraph 4(4) provides that the modifications in paragraphs 4(2) and (3) do not apply in relation to interim compulsory supervision orders or interim variations of such orders (as those terms are defined in paragraph 4(5) by reference to the 2011 Act) which are made, extended or varied before those modifications came into force but those modifications do apply in relation to interim compulsory supervision orders made before that day but extended or varied on or after that day.

**Period within which children's hearing must be heard in certain cases**

66. Section 109(7) of the 2011 Act provides that where a sheriff makes an interim compulsory supervision order under section 109(3) or (5), specifying that the child is to reside at a place of safety, a children's hearing must be arranged to take place no later than the third day after the day on which the child begins to reside at the place of safety.
67. Section 143 of the 2011 Act provides that where a child is residing at a particular place, because of a requirement for them to do so in a compulsory supervision order, the chief social work officer may transfer the child to another place if it is in the interests of the child or another child in the place that the child is being moved out of. Section 137(3) of the 2011 Act provides that where a child is transferred in this way, a children's hearing must be arranged to take place before the expiry of 3 working days, beginning with the day on which the child was transferred.
68. Paragraph 5(2) of schedule 3 of the Act modifies the time limit in section 109(7) of the 2011 Act to 7 days, instead of 3 days.
69. Paragraph 5(3) modifies the time limit in section 137(3) of the 2011 Act to 7 working days, instead of 3 working days.

70. Paragraph 5(4) provides that the modifications in paragraph 5(2) and (3) do not apply in relation to an interim compulsory supervision order (as defined in paragraph 5(5) by reference to the 2011 Act) made the day before those modifications come into force or in relation to the transfer of a child before that date.

### **Children in secure accommodation**

71. Regulation 5(1) of the Secure Accommodation (Scotland) Regulations 2013 (“the 2013 Regulations”) provides that the maximum time for which a child may be kept in secure accommodation without the authority of the children’s hearing or the sheriff is an aggregate of 72 hours (whether or not consecutive) in any period of 28 consecutive days.
72. Regulations 7(5) and 8(6) of the 2013 Regulations provide a timescale of 72 hours for the Principal Reporter to arrange a children’s hearing where a child has been placed in secure accommodation.
73. Paragraph 6(2) of schedule 3 modifies Regulation 5(1) of the 2013 Regulations to provide that the maximum time for which a child may be kept in secure accommodation without the authority of the children’s hearing or the sheriff is an aggregate of 96 hours (whether or not consecutive) in any period of 28 consecutive day.
74. Subparagraphs (3) and (4) of paragraph 6 respectively modify Regulations 7 and 8 of the 2013 Regulations to provide that where the Principal Reporter considers that it would not be reasonably practicable to arrange a children’s hearing within 72 hours, the Principal Reporter will have an additional 24 hours to arrange such a hearing.
75. Paragraph 6(5) provides that the modifications made in paragraphs 6(2) to (4) do not apply in relation to a child placed in secure accommodation before the day on which these modifications come into force.

### **Modification of certain time limits for making and determination of appeals etc.**

76. There are specified time limits for the lodging of court applications and for the making of and disposal of appeals under the 2011 Act and associated enactments.
- The time limit for making an appeal under section 154(5) of the 2011 Act is 21 days.
  - The time limit for making an appeal under section 160(6)(a) of the 2011 Act is 7 days.
  - The time limit for making an appeal under section 161(6)(a) of the 2011 Act is 21 days.
  - The time limit for making an appeal under section 163(8), 164(4) and 165(4) of the 2011 Act is 28 days.
  - The time limit for disposal of appeals under sections 157(2), 160(6)(b) and 161(6)(b) of the 2011 Act is 3 days.
  - The time limit for making an application under section 93(2)(a) or 94(2)(a) of the 2011 Act to the sheriff under rule 3.45(1) of the Act of Sederunt (Child Care and Maintenance Rules) 1997 is 7 days.
  - The time limit for disposal of appeals under regulation 11A(2)(b) of the Secure Accommodation (Scotland) Regulations 2013 is 3 days.
  - The time limit for making an appeal against a decision of the chief social worker under regulation 11(2)(a) of the Children’s Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 is 21 days.
  - The time limit for determining an appeal against a decision of the chief social worker under regulation 11(2)(b) of the Children’s Hearings (Scotland) Act 2011



*These notes relate to the Coronavirus (Scotland) Act  
2020 (asp 7) which received Royal Assent on 6 April 2020*

(Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013 is 3 days.

77. Paragraph 7 of schedule 3 modifies the time limits for the making, disposal or determination of appeals or the making or lodging of applications to extend them as follows:
- In relation to making an appeal under section 154(5) of the 2011 Act, 42 days.
  - In relation to making an appeal under section 160(6)(a) of the 2011 Act, 21 days.
  - In relation to making an appeal under section 161(6)(a) of the 2011 Act, 42 days.
  - In relation to making an appeal under section 163(8), 164(4) and 165(4) of the 2011 Act, 56 days.
  - In relation to disposal of appeals under sections 157(2), 160(6)(b) and 161(6)(b) of the 2011 Act, 7 days.
  - In relation to lodging an application under section 93(2)(a) or 94(2)(a) of the 2011 Act is 14 days.
  - In relation to the disposal of appeals under regulation 11A(2)(b) of the Secure Accommodation (Scotland) Regulations 2013, 7 days.
  - In relation to making an appeal against a decision of the chief social worker under regulation 11(2)(a) of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013, 42 days.
  - In relation to determining an appeal against a decision of the chief social worker under regulation 11(2)(b) of the Children's Hearings (Scotland) Act 2011 (Implementation of Secure Accommodation Authorisation) (Scotland) Regulations 2013, 7 days.
78. Paragraph 7(7) provides that the above modifications do not apply in relation to appeals against decisions or determinations made before the day on which paragraph 7 comes into force.

**Attendance at children's hearings etc.**

79. Rule 19 of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the 2013 Rules") currently makes provision for the remote attendance of a child or relevant person at a pre-hearing panel or a children's hearing.
80. Paragraph 8 of schedule 3 modifies rule 19 of the 2013 Rules to facilitate the remote attendance of other persons who have right to attend a pre-hearing panel or a children's panel by virtue of section 78(1) of the 2011 Act.

**Authentication of children's hearings documents**

81. Rule 98(1) of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the 2013 Rules") states that any order, warrant to secure the attendance of a child, notice, report, record or other writing required to be made, granted, given or kept by the children's hearing or pre-hearing panel or chairing member of that hearing under or by virtue of those Rules is sufficiently authenticated if it is signed by the chairing member of the relevant children's hearing or pre-hearing panel.
82. Paragraph 9 of schedule 3 modifies rule 98(1) of the 2013 Rules to also enable the Principal Reporter to authenticate documents as mentioned in that rule.

## **Looked after children**

83. The Looked After Children (Scotland) Regulations 2009 (“the 2009 Regulations”) make provision for the placing of children with kinship carers and with foster carers. Paragraph 10 of schedule 3 makes a number of modifications to the 2009 Regulations.
84. Subparagraphs (1) to (5) make modifications to the 2009 Regulations to allow local authorities to place more than the current maximum of three children with a foster carer, and to allow a foster carer to look after more children than their current approval allows.
85. Regulation 36(1) of the 2009 Regulations provides that a child can be placed, in an emergency, with a kinship carer or a foster carer for a period not exceeding three working days. Subparagraph (6) modifies the time limit from three working days, to five working days.
86. Regulation 38 of the 2009 Regulations makes provision for when an emergency placement should be reviewed by a local authority. Subparagraph (7)(a) modifies regulation 38(2) so that the local authority must review the child’s case within 5 working days, instead of 3 working days, to determine whether the placement continues to be in the best interests of the child. Subparagraph (7)(b) also inserts a new regulation 38(3A) into the 2009 Regulations which allows a local authority not to carry out such a review where the chief social work officer is satisfied that placement is in the best interests of the child, placement of the child with that carer is in the best interests of the child and it is not reasonably practicable for the authority to carry out the review within that period. It also inserts a new regulation 38(3B) which provides that where a local authority has not complied with the duty to review the placement within 5 working days, as a result of the chief social work officer being so satisfied, it must still carry out a review as soon as reasonably practicable.
87. Regulation 39 of the 2009 Regulations allows a local authority to extend placements in certain circumstances for a period not exceeding 12 weeks and with a requirement to review before the expiry of six weeks. Subparagraph (8) modifies this to a period not exceeding 24 weeks, with a requirement to review before the expiry of 12 weeks.
88. Regulation 45 of the 2009 Regulations makes provision for review where a child has been placed in kinship care under regulation 11. Subparagraph (9) modifies this so that the first review must be carried out within 3 months of the placement, instead of six weeks, and so that subsequent reviews must then be carried out within six months of the date of the previous review.
89. Subparagraph (10) makes transitional provision that the changes made by subparagraphs (6), (7) and (8) do not apply to a child who has been placed under regulation 36 of the 2009 Regulations before the day on which those subparagraphs come into force. It also provides that subparagraph (9) does not apply to a child who has been placed under regulation 11 of the 2009 Regulations before the day on which that subparagraph comes into force.

## **Part 2 – Vulnerable adults**

### **Care of adults with incapacity**

90. Subparagraph (1) of paragraph 11 of schedule 3 contains modifications of section 13ZA of the Social Work (Scotland) Act 1968 (“the 1968 Act”). These are primarily aimed at permitting local authorities to provide services more swiftly to incapacitated persons.
91. When local authorities are carrying out their functions under section 13ZA they are obliged to follow the principles in section 1 of the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”). Subparagraph (1)(a) limits the application of the principles to those set out in subsections (2) and (3) of section 1 of the 2000 Act. It removes the requirement for the local authority to apply the principles in section 1(4) of the 2000

Act, which are to take into account the present and past wishes and feelings of the adult and the views of other interested parties described in the subsection.

92. Subparagraph (1)(b) disapplies section 13ZA(4) of the 1968 Act. This therefore allows local authorities to take steps to provide a community care service to an incapacitated adult despite them having a guardian, welfare attorney or an intervener with powers relating to the proposed steps, or there being an application in process in relation to an intervention order or a guardianship order under the 2000 Act.
93. Subparagraph (2) deals with modifications to section 58A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Section 58A pertains to guardianship orders under the 1995 Act. Section 58A(5) provides that such orders are generally to be for a period of 3 years or such other period as the court determines, which may be indefinitely. Subparagraph (2) has the effect of ‘stopping the clock’ on the duration of the orders, which are time limited, whilst this subparagraph is in force. However whilst the ‘clock is stopped’ the guardianship order will continue to have effect. This does not affect any other ground which would cause the guardianship order to cease to have effect.
94. Subparagraph (3)(a) deals with section 47 certificates which authorise treatment for incapacitated adults under the 2000 Act. Section 47 certificates are granted to permit treatment for a limited period of time. The provisions in subparagraph (3)(a) have the effect of ‘stopping the clock running’ on the period of time the authority is granted for in the certificate, whilst the provisions in this subparagraph are in force. However whilst the ‘clock is stopped’ the certificate and the authority therein will continue to have effect. Nothing in this subparagraph shall affect any other ground which would cause the certificate to cease to have effect e.g. revocation.
95. Subparagraph (3)(b) makes modifications to section 58 of the 2000 Act. Section 58 concerns the disposal of an application for guardianship. Section 58(4) provides that guardianship orders will generally be for a period of 3 years or such other period (including an indefinite period) as the court determines. If the guardianship order is for a limited time then subparagraph (3)(b) will have the effect of ‘stopping the clock running’ on the period of time the guardian has been appointed for whilst these provisions are in force. Whilst the ‘clock is stopped’ the guardianship order will continue to have effect. This does not affect any other ground which would cause the guardianship order to cease to have effect.
96. Subparagraph (3)(c) modifies section 60 of the 2000 Act. Section 60 pertains to the renewal of guardianship orders. Section 60(4)(b) permits a sheriff to continue an existing guardianship order for 5 years or such period as the sheriff determines. Subparagraph 3(c) has the effect of ‘stopping the clock running’ on the period of renewal of the guardian’s appointment whilst these provisions are in force. This shall not apply where the order has been continued indefinitely. Whilst the ‘clock is stopped’ the guardianship order will continue to have effect. This does not affect any other ground which would cause the guardianship order to cease to have effect.

## ***Schedule 4 – Justice***

### **Part 1 - Courts and tribunals: conduct of business by electronic means**

#### **Electronic signatures and transmission of documents**

97. Paragraph 1(1) of schedule 4 makes provision that an electronic signature fulfils any requirement (however expressed and for whatever purpose) that a document mentioned in subparagraph (4), or a deletion or correction of it, be signed, initialled or signetted.
98. Paragraph 1(2) makes provision that any requirement (however expressed) that a document of a type mentioned in subparagraph (4) 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.

99. By virtue of paragraph 1(4), subparagraphs (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 subparagraphs 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 is to include documents required to initiate proceedings.
100. Paragraph 1(3) 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 subparagraph further provides that in certain specified circumstances willingness is capable of being inferred.
101. Paragraph 1(3)(c) specifies that electronic transmission can be made by means of upload to and download from an electronic storage system.
102. Paragraph 1(5) confers a power on the Lord President or the Lord Justice General to direct that the effects of subparagraphs (1) and (2) do not apply to a specified type of document, either in relation to some or all proceedings (see subparagraph (6)). Paragraph 5(a) requires that any such direction be made public.
103. Paragraph 1(7) sets out the interpretation applicable to terms used in this paragraph.

#### **Suspension of requirements for physical attendance**

104. Paragraph 2(1) suspends any requirement, however expressed in statute or otherwise, that a person physically attend a court or tribunal, unless the court or tribunal directs the person to attend physically.
105. Subparagraph (2) provides that subsection (1) does not suspend any requirement to physically attend a court trial diet.
106. Subparagraph (3) provides that the court may disapply any requirement that a person physically attend a trial diet by directing that the person need not do so.
107. Subparagraph (4) provides that a court or tribunal may require the physical attendance of a person under subparagraph (1) only if allowing a person to attend by electronic means would prejudice the fairness of proceedings, or would otherwise be contrary to the interests of justice.
108. Subparagraph (5) provides that a court can direct a person to attend a trial diet by electronic means under subparagraph (3) only if attendance by electronic means would not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice.
109. Subparagraph (6) provides that a court or tribunal may issue or revoke a direction under subparagraph (1) or (3) on the motion of a party or of its own accord.
110. Subparagraph (7) provides that the court or tribunal must, in considering whether to issue or revoke a direction under subparagraph (1) or (3), give all parties to the proceedings an opportunity to make representations, and have regard to any guidance issued by the Lord President or the Lord Justice General. Paragraph 5(b) requires that any such guidance be made public.
111. Subparagraph (8) provides that references to physically attending a court or tribunal are to being in a particular place or the same place as another person for the purpose of any "proceedings" (defined in paragraph 6) 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.

### **Attendance by electronic means**

- 112. Paragraph 3(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.
- 113. Subparagraph (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 2.
- 114. Subparagraph (3) provides that a court or tribunal may vary or revoke a direction made under subparagraph (1).
- 115. Subparagraph (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.
- 116. Subparagraph (5) provides that a court or tribunal may issue a direction under subparagraph (1) on the motion of a party or of its own accord.
- 117. Subparagraph (6) provides that before issuing a direction under subparagraph (1) the court or tribunal must give all parties an opportunity to make representations, and have regard to any guidance issued by the Lord President or the Lord Justice General. Paragraph 5(b) requires that any such guidance be made public.
- 118. Subparagraph (7) provides that a direction under subparagraph (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.
- 119. Subparagraph (8) provides that nothing in subparagraph (7) 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.

### **Further provision about attendance by electronic means**

- 120. Paragraph 4(1)(a) allows a court or tribunal to issue a general direction under paragraph 3(1) that applies to all proceedings of a specified type, provided that the only party to such proceedings is a public official. This allows a court, for example, to issue a direction as to how applications for search warrants should be made by the procurator fiscal. Subparagraph (1)(b) allows a court or tribunal to issue a further direction overriding a general direction issued under subparagraph (1)(a) in individual cases. The requirement to give parties the opportunity to make representations under paragraph 3(6)(a) does not apply in relation to a general direction issued by virtue of paragraph 4(1)(a).

### **Publication of directions and guidance**

- 121. Paragraph 5 requires the publication of certain directions and guidance.

### **Interpretation of Part**

- 122. Paragraph 6 provides definitions for words and terms used in the other paragraphs of Part 1 of schedule 4.

## **Part 2 - Fiscal fines**

### **Fixed penalty: conditional offer by procurator fiscal**

- 123. Paragraph 7 of schedule 4 increases the maximum available fixed penalty that may be offered by the procurator fiscal under section 302 of the Criminal Procedure (Scotland) Act 1995 from £300 to £500.
- 124. Paragraph 7(4) makes consequential modification to the Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 ([S.S.I. 2008/108](#)) by substituting the scale of fixed penalties with a new scale in order to reflect the increased maximum penalty.

## **Part 3 - Cases beginning with an appearance from custody**

### **Ability to take case in any sheriff court**

- 125. Paragraph 8(1) of schedule 4 makes provision for first appearances from police custody and the continuation of those proceedings to be heard in any sheriff court by a sheriff of any sheriffdom and sets out the limits of that jurisdiction.
- 126. Paragraph 8(1)(a) and (b) provides where an accused appears in court for the first time from police custody, that first calling of criminal proceedings may be taken in any sheriff court in Scotland and may be dealt with in that court by a sheriff of any sheriffdom.
- 127. Paragraph 8(2)(a) and (b) sets out when a first calling of criminal proceedings involves an appearance from police custody for the purposes of subparagraph (1).
- 128. Paragraph 8(3) provides it is for the Lord Advocate or the procurator fiscal to determine which sheriff court a calling is to be taken in under subparagraph (1).
- 129. Paragraph 8(4) to (6) extends the national jurisdiction of the court beyond the first calling of criminal proceedings from police custody.
- 130. Subparagraph (5) makes provision for the court of first appearance from police custody and a sheriff of any sheriffdom to be able to continue to deal with criminal proceedings after the first calling subject to the qualifications set out in subparagraph (6).
- 131. Subparagraph (6)(a) sets out when the national courts' jurisdiction ends for proceedings on petition or indictment. The effect of subparagraph (6)(a) is that the court of national jurisdiction may deal with any continuation of proceedings on petition or indictment from first appearance from police custody up until the accused is fully committed (committed until liberated in due course of law) or until the conclusion of any earlier hearing at which a plea of not guilty is tendered and not accepted by the procurator fiscal.
- 132. Subparagraph (6)(b) sets out when the national courts' jurisdiction ends for summary criminal proceedings. The effect of subparagraph (6)(b) is that the court of national jurisdiction may deal with any continuation of summary criminal proceedings from first appearance from police custody up until and including final disposal of a plea of guilty or until the conclusion of a hearing at which a plea of not guilty is tendered and not accepted by the procurator fiscal.
- 133. Subparagraph (7) makes it clear that criminal proceedings involving multiple accused or other persons are covered by paragraph 8.
- 134. Paragraph 9 contains supporting provisions to give effect to the operation of paragraph 8.
- 135. Paragraph 9(1) provides a sheriff court has jurisdiction for all cases which come before it by virtue of paragraph 8.

136. Paragraph 9(2) and (3) confers powers of national jurisdiction upon procurators fiscal and sheriffs, including summary sheriffs, to support the operation of paragraph 8.
137. Paragraph 9(4) sets out the definition of “criminal proceedings” for the purpose of paragraphs 8 and 9. This includes proceedings on petition, indictment, summary criminal proceedings and ancillary proceedings such as those set out in subparagraph (4) (d).
138. The effect of subparagraph (4)(d) is that ancillary proceedings are distinct from criminal proceedings on petition, indictment or summary complaint for the operation of a national courts’ jurisdiction under paragraph 8.
139. This means where the national courts’ jurisdiction ends under paragraph 8(6) as a result of, for example, a plea of not guilty in a summary case, or after committal until liberation of due course of law in an indictment case, and an accused or witness in ongoing criminal proceedings subsequently fails to appear at a diet of which they have been given due notice, under paragraph 9(4)(d)(iv), the national court will continue to have jurisdiction over any subsequent appearance from custody upon an apprehension warrant for non-appearance, as this constitutes ancillary proceedings.

#### **Part 4 – Extension of time limits**

##### **Criminal proceedings: extension of time limits**

140. Paragraph 10 of schedule 4 makes provision to extend certain statutory time limits contained in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) relating to criminal proceedings.
141. Paragraph 10(2) modifies section 52T of the 1995 Act which applies the statutory time limits contained in sections 65 and 147 of the 1995 Act to cases where an accused person has been detained in hospital by virtue of an assessment order or a treatment order. It provides for time limits contained in those sections to apply as extended by virtue of paragraph 10(3) and (5).
142. Paragraph 10(3) modifies section 65 of the 1995 Act, which applies certain time limits in respect of solemn trials, by adding new subsections (11), (12) and (13).
143. New subsection (11) provides that in calculating any of the time periods specified in section 65(12), no account is to be taken of the suspension period.
144. New subsection (12) provides that those periods are:
  - any period mentioned in section 65(1), which specifies the time limit within which a preliminary hearing (in High Court cases), a first diet (sheriff court cases) and the trial (in any case) must be commenced following the first appearance of the accused on petition, including where this period has been extended under section 65(3) or on appeal under section 65(8), or under section 74(4)(c); and
  - any period mentioned in section 65(4), which specifies the time limit within which an indictment must be served on any accused who is committed for any offence and being held in custody pending trial, and also the time limits for commencing a preliminary hearing/first diet and trial in any such case including where this period has been extended under section 65(5) or on appeal under section 65(8).
145. New subsection (13) provides that the suspension period referred to in new subsection (11) is a period of 6 months beginning on whichever is later of:
  - the day on which this paragraph (paragraph 10 of schedule 4 of the Act) comes into effect; or
  - in the case of any criminal proceedings commenced after this paragraph has come into effect, where the time limit is specified in section 65(1), the day on which the



accused first appears on petition in respect of the offence, or in the case of the time limits specified in section 65(4), the date on which the accused is committed until liberated in due course of law.

146. Paragraph 10(4) modifies section 136(1) of the 1995 Act so as to provide 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 temporarily increased from 6 months to 12 months.
147. Paragraph 10(5) modifies section 147 of the 1995 Act, which sets a 40-day limit on detaining a person charged with an offence in summary proceedings pending trial, by adding new subsections (5) and (6).
148. New subsection (5) provides that, in calculating the 40-day period referred to in section 147(1), including where this period has been extended either under subsection (2) or on appeal under subsection (3), no account is to be taken of the suspension period.
149. New subsection (6) provides that the suspension period referred to in subsection (5) is a period of 3 months beginning on whichever is later of the day on which this paragraph (paragraph 10 of schedule 4 of the Act) comes into effect, or the date on which the complaint is brought in court.
150. Paragraph 10(6) modifies section 201 of the 1995 Act, which provides the court with a power to adjourn a case before sentence for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case. It substitutes a new subsection (3) which allows the court to adjourn the hearing of such a case for such period as the court considers appropriate. This temporarily replaces the existing power to adjourn a case for 4 weeks or 8 weeks on cause shown.
151. Subparagraphs (7) and (8) of paragraph 10 make a consequential modification to section 21 of the Criminal Justice (Scotland) Act 2003 concerning the power to adjourn cases involving sexual and certain other offences for pre-sentence reports. This has the effect of temporarily applying section 201(3) of the 1995 Act, modified by paragraph 10(6), to such cases as it applies to any other case. This means that the court can adjourn the hearing of such a case for such a period as the court considers appropriate.

## **Part 5 – Evidence**

### **Exceptions to the rule that hearsay evidence is inadmissible**

152. Section 259 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) provides for exceptions to the general rule that hearsay evidence is inadmissible. Under this section, evidence of a statement made by a person otherwise than while giving evidence in court shall be admissible as evidence of any matter contained in the statement as long as the judge is satisfied of the matters contained in section 259(1)(a) to (d) and where the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in section 259(2).
153. Paragraph 11 of schedule 4 modifies section 259 of the 1995 Act insofar as it relates to the reasons why a person will not give evidence in the proceedings. The provision broadens the scope of cases in which an application may be made to have evidence of a statement admitted by virtue of section 259(1).
154. Paragraph 11(2)(b) modifies section 259 by inserting a new subsection (2A), which provides that the reasons referred to in paragraph (a) of subsection (1) also include that to have the person who made the statement physically attend the trial would give rise to a particular risk to the person’s wellbeing attributable to coronavirus, or of transmitting coronavirus to others, and that it is not reasonably practicable for the person to give evidence in any other competent manner.



## **Part 6 – Community orders**

### **Community payback orders: extension of unpaid work or other activity requirements**

155. Paragraph 12 of schedule 4 extends by 12 months the period within which unpaid work or other activity requirements in Community Payback Orders (“CPOs”) must be completed. This applies to all CPOs imposed by a court on or before the day this Act received Royal Assent, and affects the particular period specified for each individual order (i.e. whatever period was originally specified by the court when each individual CPO was imposed, that period will be 12 months longer).
156. Subparagraph (3) enables the Scottish Ministers to further extend this period, by regulations. Such a further extension would apply to all CPOs imposed on or before the day the regulations come into force. The regulations can only be made if the Scottish Ministers are satisfied that, if no action were taken, it is likely that there would be non-compliance with unpaid work or other activity requirements as a result of the coronavirus pandemic, or that such regulations are necessary as a result of the impact of the pandemic on local authorities (which deliver community orders through justice social work) or on the Scottish Courts and Tribunals Service.
157. Subparagraph (7) places a duty on local authorities to inform those subject to the relevant CPOs of the changes made by this provision (e.g. that the period within which the unpaid work or other activity requirement has been extended, and by how much).

### **Community payback orders: time limit for completion of unpaid work or other activity**

158. Paragraph 13 modifies the application of section 227L of the Criminal Procedure (Scotland) Act 1995 in order to provide that, when imposing an unpaid work or other activity requirement as part of a CPO, the court must specify a period of 12 months or more when determining how long the offender has to complete the requirement.

### **Community orders: postponement**

159. Paragraph 14 enables the Scottish Ministers, by regulations, to postpone the effects of CPOs or drug treatment and testing orders (“DTTOs”). The orders to be affected by such a postponement can be specified by reference to the type of order (e.g. Community Payback Order); the requirements imposed under an order (e.g. supervision requirements); the type of offender; and the type of offence the offender has been convicted of.
160. During the period of postponement, which cannot be longer than 6 months, no time elapses with regard to any relevant time periods specified in the order. For example, if a CPO contained an offender supervision requirement which, at the point of postponement, had 3 months left to run, that position would be maintained until the end of the postponement period, at which point 3 months would still remain. During the period of postponement, the offender is not subject to any of the requirements of the order and so cannot breach the order.
161. The regulations cannot postpone an unpaid work or other activity requirement; the modifications of such requirements as a result of coronavirus are dealt with separately under paragraph 12.
162. The regulations can be made only if the Scottish Ministers are satisfied that, if no action were taken, it is likely that there would be non-compliance with the requirements of community orders as a result of the coronavirus pandemic, or that such regulations are necessary as a result of the impact of the pandemic on local authorities (which deliver community orders through justice social work) or on the Scottish Courts and Tribunals Service.

163. Subparagraph (7) places a duty on local authorities to inform those subject to the relevant CPOs or DTTOs of the changes made under any such regulations (e.g. that certain requirements in their order have been postponed, and for how long).

### **Community orders: variation**

164. Paragraph 15 enables the Scottish Ministers, by regulations, to vary the requirements of CPOs or DTTOs. Such variation can include revoking requirements, or orders in their entirety.
165. The orders to be affected by such a variation can be specified by reference to the type of order (e.g. Community Payback Order); the requirements imposed under an order (e.g. supervision requirements); the type of offender; and the type of offence the offender has been convicted of.
166. Certain restrictions are placed on this regulation-making power, which all broadly serve to ensure that it cannot be used to increase the severity of the sentence, or to alter aspects which are unlikely to be affected by the effects of coronavirus. In particular, regulations cannot change the amount of compensation to be paid; increase the number of hours of unpaid work or activity; increase or extend the period during which an offender is subject to a requirement; or increase the period during which an offender's movements are to be restricted.
167. The regulations can only be made if the Scottish Ministers are satisfied that, if no action were taken, it is likely that there would be non-compliance with the requirements of community orders as a result of the coronavirus pandemic, or that such regulations are necessary as a result of the impact of the pandemic on local authorities (which deliver community orders through justice social work) or on the Scottish Courts and Tribunals Service. In addition, the Scottish Ministers must be satisfied that any variation through regulations does not make the affected orders more difficult to comply with.
168. Subparagraph (6) places a duty on local authorities to inform those subject to the relevant CPOs or DTTOs of the changes made under any such regulations (e.g. that certain requirements in their order have varied, and in what way).

## **Part 7 – Parole Board**

### **Chairing of the Parole Board**

169. Paragraph 17 of schedule 4 modifies the Prisoners and Criminal Proceedings (Scotland) Act 1993 at schedule 2 to provide for the functions of the Parole Board Chairman under the 1993 Act, or under the Parole Board (Scotland) Rules 2001 ([S.S.I. 2001/315](#)), to be delegated to another member of the Parole Board.
170. Subparagraph (2) inserts new paragraphs 2K and 2L into schedule 2 of the 1993 Act. Paragraph 2K(1) provides that if the chairman is unable to carry out functions for reasons relating to coronavirus then they are to be carried out by the next most senior member of the Parole Board. Paragraph 2K(2) specifies the meaning of 'the most senior member' as (a) the member whose initial appointment began first or (b) if members were appointed on the same day, then the oldest of those members. Paragraph 2K(3) provides that in the Rules the definition of "the chairman of the Board appointed under paragraph 1 of schedule 2 of the 1993 Act" will, where the chairman's functions are being carried out by the next most senior member, mean that member.
171. Paragraph 2L(1) provides for the Chairman to arrange for the delegation of that individual's functions to another member or members of the Parole Board. Paragraph 2L(2) provides that where the Chairman has made arrangements to delegate that individual's functions, then a member (or members, if more than one has been delegated the function) may carry out those functions. Paragraph 2L(3) gives effect to these new arrangements, whenever made, from the date of commencement of this Act, with 2L(4)

clarifying that references to the Chairman or Chairperson in the Act and Rules will refer to the member or members who has had the function or functions delegated to them.

### **Modifications of Parole Board Rules**

172. Paragraph 18 modifies the Parole Board (Scotland) Rules 2001. Subparagraph (2) modifies Rule 2 (Interpretation), and subparagraph (4) modifies Rule 17, (application of Part IV to particular prisoners) the effect of these modifications being to remove extended sentence prisoners who have been recalled and are serving the extension part of their sentence from Part IV of the Rules, and placing them to be dealt with by Part III.
173. Subparagraph (3)(a) substitutes text in Rule 12A (Use of Live Link) putting beyond doubt that the entirety of the proceedings of the Parole Board or Tribunal can take place via audio-visual or audio technology. Subparagraph (3)(b) inserts a new subparagraph (1A) after paragraph (1) in Rule 12A, making clear that the Board or Tribunal can, when determining whether the interests of justice allow the use of audio or audio-visual technology, weigh the impact on the interests of justice of a hearing not being able to take place at all without such technology. Subparagraph (5) substitutes the wording in Rule 20 (Hearing) – so the tribunal may decide to hold an oral hearing if it is in the interests of justice to do so. This changes the previous Rule which required an oral hearing to be held unless all the parties and the Tribunal agreed not to hold one.

## **Part 8 – Release of prisoners**

### **Early release of prisoners**

174. Paragraph 19(1) of schedule 4 provides the Scottish Ministers with the power to release prisoners who fall within a class of prisoners specified within regulations. Subparagraph (6) provides further information on what these regulations must contain. Subparagraph (8) provides the Scottish Ministers with the flexibility to make different provision for different purposes including differentiating between classes of person or classes of prison or parts of a prison.
175. Subparagraph (2) restricts the Scottish Ministers power to make regulations under subparagraph (1), providing that regulations can be made only if the Scottish Ministers are satisfied that the regulations are a necessary and proportionate response to the effects of coronavirus on a prison or prisons. The regulations must be for the purpose of protecting the security and good order of a prison or prisons or protecting the health, safety and welfare of those accommodated or working in a prison.
176. Subparagraph (3) prevents the release of a prisoner who falls within any of the categories specified in subparagraph (4) or where the Governor of the prison concerned considers that the prisoner poses an immediate risk of harm to an identified person.
177. Subparagraph (4) lists the persons who are excluded from being released via regulations made under subparagraph (1) and subparagraph (5) clarifies the terms “life prisoner” and “untried prisoner” for the purposes of subparagraph (4).
178. Subparagraph (7) details how a prisoner released via regulations made under subparagraph (1) is to be treated following release. Prisoners released will be treated as if they had been released in accordance with Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Short-term prisoners are to be released unconditionally while long-term prisoners are to be released on licence. Those sentenced to detention will be treated as if they are released in accordance with the relevant provisions in sections 6 or 7 of the 1993 Act as appropriate.

### **Regulations under paragraph 19: procedure and expiry**

179. Paragraph 20 makes provision for the procedure to be followed when making regulations under paragraph 20 and for the expiry of those regulations. Subparagraph (1)

provides that regulations are subject to the affirmative procedure unless they are caught by the expedited procedure in subsection (2) to (5).

180. Subparagraph (2) clarifies that the regulations can be made under the expedited procedure only if certain conditions are met. These are: that the order does not provide for the release of prisoners for a period greater than 180 days before they would otherwise have been released; and it is declared by the Scottish Ministers that by reason of urgency it is necessary to make the order without a draft having been approved by the Scottish Parliament.
181. Subparagraph (3) provides that regulations made under the expedited procedure must be laid before the Scottish Parliament and cease to have effect after 28 days unless approved by the Scottish Parliament during that period. Subparagraph (4) further clarifies how that 28 day period is to be calculated. Subparagraph (5) preserves anything done under regulations prior to their cessation and clarifies that the cessation of the regulations does not prevent further regulations being made.
182. Subparagraph (6) provides that regulations made under the affirmative procedure (including those initially made under the expedited procedure and subsequently approved by the Parliament) expire after 180 days. Subparagraph (7) clarifies that regulations can be revoked and further regulations can be made despite these time-limits.

## **Part 9 - Legal aid**

### **Assessment of claims for interim payment of fees and outlays**

183. Paragraph 21 of schedule 4 temporarily inserts provisions into section 33 of the Legal Aid (Scotland) Act 1986 which modify the level of scrutiny the Scottish Legal Aid Board must apply in their assessment of claims for interim fees or outlays. The effect of these new provisions is that the Board need not consider supporting evidence in order to be satisfied that the fees and outlays claimed for have been properly incurred; where a claimant for interim payment confirms that the fees or outlays claimed have been properly incurred, the Board will accept this. These provisions apply to all aspects of legal aid.

### **Recovery of overpayment of interim fees or outlays paid to firms**

184. Paragraph 22 provides the Scottish Legal Aid Board with additional powers to recover overpayments which follow from the making of an interim payment. Where an interim payment has been paid to a firm on the instruction of the solicitor making the claim, and on assessment of a final account the Scottish Legal Aid Board determines that an overpayment has been made, the firm to whom the payment was made will now also be liable, along with the solicitor, to repay any excess sum. If payment remains due, deductions can be made from future payments due from the Scottish Legal Aid Fund to any solicitor of the firm.

### **Payment of interim fees for civil legal aid to counsel**

185. Paragraph 23 removes the conditions that must be satisfied before counsel can make a claim for interim payment.

## **Schedule 5 – Alcohol licensing**

### **Requirement to hold a hearing**

186. Paragraph 1 of schedule 5 of the Act sets out modifications to the operation of provisions in section 133 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) relating to requirements falling on Licensing Boards to hold hearings.

187. Paragraph 1 provides that section 133 has effect as if new subsections (3A) to (3D) were inserted into that section. These new subsections provide flexibility for the Licensing Board in respect of holding in-person hearings. New subsection (3A) enables the Licensing Board to determine that a hearing cannot be held in person, or at a meeting of the Licensing Board, because of reasons relating to coronavirus. Where such a determination is made, the Board must comply with new subsection (3C) before reaching a decision on the matter which would have been the subject of the hearing.
188. New subsection (3C) obliges the Licensing Board to give any person who would have been heard at the hearing the opportunity to be heard either by telephone, in written representations (including by electronic communication) or, where available, by video conference.
189. Subsection (3D) ensures that any procedural requirements made by regulations under the 2005 Act are classed as being adhered to notwithstanding a hearing in person has not taken place.

### **Premises licences**

190. Paragraph 2 sets out modifications to the operation of provisions in the 2005 Act relating to premises licences.
191. Section 28 of the 2005 Act sets out the period of effect of premises licences. Paragraph 2(2)(b) of schedule 5 of the Act provides that section 28 of the 2005 Act has effect as if new subsection (5A) were inserted into that section. The effect of this is to put beyond doubt that a premises that ceases to sell alcohol for a temporary period as a result of the coronavirus outbreak is not to be classed as premises ceased to be used for the sale of alcohol by virtue of section 28(5)(b) of the 2005 Act. This means that a premises licence will not cease to have effect by virtue of a premises temporarily closing for a reason relating to coronavirus.
192. Section 34 of the 2005 Act enables applications for the transfer of a premise licence to be made by certain persons other than the licence holder. Such applications have to be made within 28 days of the occurrence of certain events mentioned in section 28(3) of the 2005 Act. Paragraph 2(3) of schedule 5 of the Act provides discretion for Licensing Boards to be able to accept applications for the transfer of premises licences after the 28 day deadline. This discretion, contained in new section 34(1A) of the 2005 Act, is available where the Licensing Board considers it appropriate in respect of the coronavirus outbreak. Paragraph 2(2)(a) of schedule 5 of the Act makes a consequential change to section 28 of the 2005 Act to the effect that a premises licence continues to have effect when a late transfer application is accepted by the Licensing Board. By virtue of section 28(3) of the 2005 Act, the licence ceases to have effect if that application is ultimately refused.
193. Paragraph 2(4) makes necessary modifications arising from paragraph 1 of schedule 5 of the Act relating to review hearings provided for in section 39 of the 2005 Act. As a result of discretion being provided for Licensing Boards to decide not to hold a hearing in person, modifications are necessary to ensure that decisions made under review, which may now not have been made through a hearing in person, are valid for the purposes of the taking of steps mentioned in section 39(2). Before such steps are taken the Licensing Board must have complied with new section 133(3C) (see paragraph 1 of schedule 5 of the Act). These modifications are provided for in new section 39(3A).
194. Paragraph 2(5) modifies the operation of section 45 of the 2005 Act relating to provisional premises licences, providing that section 45 of the 2005 Act has effect as if new subsection (7A) were inserted into that section. The effect is that the existing discretion for a Licensing Board to extend a provisional premises licence for a period to be determined by the Board remains, but where a person is applying for an extension for the first time and it is for reasons related to the Coronavirus outbreak, then a 6 month

extension must be granted. Further extensions can continue to be considered through the operation of section 45.

195. Paragraph 2(6) modifies the operation of section 54 of the 2005 Act relating to where a premises manager is no longer able to undertake their duties. Additional time (28 days instead of 7 days) is provided for the premises licence holder to notify the Licensing Board that any of the events in section 54(2) have occurred. Section 54(4)(b) is modified to the effect that instead of a premises licence variation application to substitute a new premises manager being required to be submitted to the Licensing Board within 6 weeks, a premises licence holder has up to 3 months from the date of the loss of the premises manager. The Licensing Board can extend this period of 3 months for a further period of time for a reason relating to the coronavirus outbreak.
196. Paragraph 2(7) modifies the operation of section 69 of the 2005 Act relating to notification periods to the Chief Constable of Police Scotland and Licensing Standards Officers in respect of extended hours applications. New section 69(2A) and (3A) provide for the Chief Constable and Licensing Standards Officers being required to advise the Licensing Board whether they can provide views within the 10 day period provided for in section 69. The Licensing Board can accept views after this date if they consider it reasonable to do so.
197. Paragraph 2(8) modifies the operation of paragraph 3 of schedule 3 of the 2005 Act relating to the requirement that any activity carried out on the premises is to be carried out in accordance with the operating plans for premises (which forms part of the premises licence). Paragraph 2(8) puts beyond doubt that if food is sold on the premises but the operating plan does not contain an express term to the effect that food may be taken away, or delivered, from the premises for consumption off the premises, a term to that effect is to be implied into the operating plan.

### **Personal licence holders**

198. Paragraph 3 sets out a number of modifications to the operation of provisions in the 2005 Act relating to personal licence holders.
199. Section 77 of the 2005 Act makes provision relating to the period of effect of a personal licence. Section 78 of the 2005 Act makes provision relating to the renewal of a personal licence. Section 87 of the 2005 Act makes provision relating to a personal licence holder's duty to undertake training.
200. Subparagraphs (2), (3) and (4) of paragraph 3 modify sections 77, 78 and 87 of the 2005 Act respectively.
201. A personal licence has effect for a period of 10 years from the date of issue (see section 77 of the 2005 Act). On application by the licence holder, a personal licence can be renewed for further 10 year periods. If a personal licence renewal application (made under section 78 of the 2005 Act) is not determined by a Licensing Board before the expiry date of the licence, the personal licence ceases to have effect. Paragraph 3(2) provides that where a personal licence renewal application is made and the Board has not determined the application before the expiry date, the licence will continue to have effect for a period of 6 months. This provides additional time for a Licensing Board to determine an application. This provides flexibility for Licensing Boards when capacity may be reduced due to the coronavirus outbreak, and is also necessary in light of the modifications made by paragraph 3(3) of schedule 5 of the Act.
202. Section 78 of the 2005 Act provides that a personal licence holder may make a personal licence renewal application during the period from 12 months prior to the expiry date up to three months prior to the expiry date. Paragraph 3(3) of schedule 5 of the Act has the effect that a personal licence renewal application may be made up to the day before the expiry date of the licence. That is provided the Licensing Board is satisfied that, for a reason relating to coronavirus, the licence holder was unable to make the



application within the usual period allowed. This means a personal licence holder is no longer required to apply for renewal at least 3 months prior to the expiry date.

203. Paragraph 3(4) provides that if the Licensing Board is satisfied that the coronavirus outbreak means completion of necessary training cannot be done in line with the timescales in section 87 of the 2005 Act, the Licensing Board can extend the period up to a length of time of their choosing for completion of the necessary training and for the licence holder to provide evidence of having undertaken that training. The Licensing Board can, by virtue of new section 87(3B), extend the period more than once.

### **Licensing Boards etc.**

204. Paragraph 4 modifies the operation of a number of provisions in the 2005 Act relating to Licensing Boards.
205. Paragraph 4(2) modifies section 9A of the 2005 Act to provide a new timescale for a Licensing Board to publish their annual functions report if they are unable (for a reason relating to coronavirus) to adhere to the timings provided in section 9A(1) of the 2005 Act. If a Board is unable to adhere to the timings in section 9A(1), a notice is required to be published to this effect along with an estimate as to when the annual functions report will be published. Paragraph 4(2) also provides that the functions report must be published not later than 9 months after the end of the financial year (meaning the year ending on 31 March). Similar modifications are made to section 9B of the 2005 Act by paragraph 4(3) of schedule 5 of the Act, relating to annual financial reports of Licensing Boards.
206. Section 135 of the 2005 Act allows a Licensing Board to relieve any applicant or other party to proceedings before the Board of certain procedural failings. This is where the failure is due to mistake, oversight or other excusable cause and the Board considers it appropriate in all the circumstances to relieve the failure. Section 135(3) defines what is meant by “procedural provision” for the purposes of that section. Section 135 is extended by paragraph 4(4) of schedule 5 of the Act to include procedural failings of Licensing Boards. This is only where the failure is due to an excusable cause and that excusable cause relates to coronavirus.
207. Schedule 1 of the 2005 Act makes further provision in relation to Licensing Boards. Paragraph 4(5) of schedule 5 of the Act provides that schedule 1 of the 2005 Act has effect as if various modifications were made.
208. New paragraph 10(1A) of schedule 1 provides that a Licensing Board may decide to delegate decision-making over any matter listed in paragraph 10(2) to a Committee of the Board consisting of no less than 3 members. Such a delegation can take place only if a Licensing Board considers it necessary for a reason relating to coronavirus.
209. New paragraphs 11(2A) to (2C) of schedule 1 provide for an increased length of time for new members of Licensing Boards to have undertaken necessary training where an extension to comply with training requirements is necessary as a result of the coronavirus outbreak. Consequential changes are made to the Licensing (Training) (Scotland) Regulations 2007 ([S.S.I. 2007/95](#)) by paragraph 4(7) and (8) of schedule 5 of the Act.
210. Where the period to undergo training and provide evidence of such has been extended, the disqualification from taking part in proceedings of the Licensing Board (in paragraph 10(3) of schedule 1) is removed. However, that is subject to new paragraph 11(3A)(b) which provides that the member must not take part in proceedings of the Licensing Board until the clerk of the Board has briefed the member about the role of a member of the Board, about decision-making by public authorities and about the different licences governed by the 2005 Act.

- 211. Paragraph 12(1) of schedule 1 is modified so the quorum for a meeting of a Licensing Board is one-third of members rather than one-half. The proviso that the quorum is, in any case, not fewer than 3 members is maintained.
- 212. Paragraph 12(2) of schedule 1 is modified so that the Licensing Board does not have to meet in public if it cannot do so as a result of the coronavirus outbreak. A similar modification is made to paragraph 5(3) of schedule 2 relating to meetings of Local Licensing Forums.

### **Modifications of duties of Licensing Standards Officers**

- 213. Paragraph 5 sets out a number of modifications to the operation of provisions in the 2005 Act relating to Licensing Standards Officers.
- 214. Section 16 of the 2005 Act makes provision relating to the training of Licensing Standards Officers. Sections 57 and 73A of the 2005 Act make provision relating to notification of licensing applications to, amongst other persons, Licensing Standards Officers.
- 215. Subparagraphs (2), (3) and (4) of paragraph 5 of schedule 5 of the Act modify sections 16, 57 and 73A of the 2005 Act respectively. These modifications provide for different timescales for completion of training and other procedures provided for in those sections. The different timescales will provide additional flexibility during the coronavirus outbreak.

### **Notification by the chief constable**

- 216. Paragraph 6 modifies the operation of a number of provisions in the 2005 Act relating to the Chief Constable of Police Scotland being required to respond within 21 days to a notice from a Licensing Board. The purposes of the response is to provide information to Licensing Boards in respect of various licensing matters.
- 217. The provisions which are modified are: sections 21 (notification of premises licence application), 24 (applicant's duty to notify of convictions), 24A (Licensing Board's power to request antisocial behaviour report), 33 (notification of premises licence transfer application), 44 (notification of conviction), 73 (notification of personal licence application), 75 (applicant's duty to notify of convictions) and 83 (notification of conviction) of the 2005 Act.
- 218. The effect of the modifications is that if the Chief Constable is unable to offer views within 21 days, the Licensing Board must be advised of this and given a timeframe for when the Chief Constable expects to be able to provide views.

### **Interpretation**

- 219. Paragraph 7 has the effect of modifying section 147 (interpretation) of the 2005 Act as if there were inserted a definition of "coronavirus" into that Act.

### **Modification of the Licensing (Procedure) (Scotland) Regulations 2007**

- 220. Paragraph 8 modifies the operation of the Licensing (Procedure) (Scotland) Regulations 2007 ([S.S.I. 2007/343](#)) ("the Procedure Regulations").
- 221. Regulations 12 and 13 of the Procedure Regulations provide that hearings under various provisions of the 2005 Act must take place within a certain time period. Paragraph 8(2) and (3) provide that the Procedure Regulations have effect as if regulations 12A and 13A were inserted into those Regulations. New regulations 12A(1) and 13A(1) provide that if, for a reason relating to coronavirus, a Licensing Board is unable to hold a hearing within the period required by regulation 12 or 13 (as the case may be), the Board must hold the hearing as soon as reasonably practicable after the end of that period. New regulations 12A(2) and 13A(2) of the Procedure Regulations make consequential



provision in light of the modifications to section 133 of the 2005 Act made by paragraph 1 of schedule 5 of the Act.

- 222. Regulation 15 of the Procedure Regulations requires the clerk of a Licensing Board to issue a statement of reasons for certain decisions of the Board within 14 days of receipt of a notice requesting those reasons. Where, for a reason relating to coronavirus, reasons cannot be issued within 14 days, the modification made by paragraph 8(4) of schedule 5 enables the clerk to notify the person who required the statement of reasons to be given that there will be a delay and to issue the statement of reasons as soon as reasonably practicable after the end of the 14 day period.
- 223. Regulation 20(2) to (4) of the Procedure Regulations require a Licensing Board to carry out certain duties related to updating of licences or issuing replacement licences or summaries of licences, within 14 days of certain events. Where, for a reason relating to coronavirus, a Licensing Board is unable to carry out those duties within 14 days, paragraph 8(5) provides that the Board is to respond as soon as reasonably practicable afterwards.

## ***Schedule 6 – Functioning of public bodies***

### **Part 1 - Licensing other than alcohol licensing**

- 224. Paragraph 1 of schedule 6 of the Act sets out a number of modifications to the operation of provisions in the Civic Government (Scotland) Act 1982 (“the 1982 Act”) and the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 ([S.S.I. 2006/43](#)).
- 225. Section 3 of the 1982 Act makes provision for the discharge of functions of licensing authorities. Paragraph 1(2) of schedule 6 adjusts certain timescales contained within section 3 of the 1982 Act to the effect that a licensing authority has an additional three months to consider an application before an application for a licence will be deemed to have been granted, renewed or varied (as the case may be). Paragraph 1(9) and (10) consequentially modify the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 in light of this.
- 226. Section 7 of the 1982 Act makes provision for certain offences under the 1982 Act. Section 7(7) of the 1982 Act requires the clerk of the court to transmit information relating to such offences to licensing authorities within 6 days after the date of conviction. Paragraph 1(3) of schedule 6 modifies section 7 to provide some flexibility for the clerk of the court (if needed due to the coronavirus outbreak) to transmit the required information after that time period. Similar changes are made by paragraph 1(4) in relation to the operation of section 27 of the 1982 Act (functions of the court in relation to second-hand dealers convicted of offences) and paragraph 1(5) in relation to the operation of section 35 of the 1982 Act (functions of the court in relation to metal dealers convicted of offences).
- 227. Section 133 of the 1982 Act makes provision for the interpretation of various terms in that Act. Paragraph 1(6) of schedule 6 of the Act has the effect of modifying section 133 of the 1982 Act as if there were inserted a definition of “coronavirus” into that Act.
- 228. Schedule 1 of the 1982 Act makes further general provision about the licensing system. Paragraph 1(7) of schedule 6 makes a number of changes to the operation of schedule 1 including flexibility about how a licensing authority can publish certain information and extending timescales for carrying out certain activities. This includes provision extending to three months the time period within which a licensing authority can accept, on good cause being shown, late applications for renewal of a licence (see paragraph 1(7)(b) of schedule 6). Paragraph 1(7) of schedule 6 also makes provision which provides flexibility for the licensing authority to decide that if it cannot hold a hearing in person due to coronavirus, then the authority may give the person who would have been heard at a hearing the opportunity to be heard either by telephone,

in written communication or, where available, by video conference. Provision is also made to ensure that any relevant procedural requirements are classed as being adhered to notwithstanding a hearing in person has not taken place.

229. Schedule 2 of the 1982 Act makes provision relating to control of sex shops. Similar changes as contained in paragraph 1(7) of schedule 6 for the general licensing system are made in paragraph 1(8) for the specific control of sex shops provisions in schedule 2.

## **Part 2 - Freedom of information**

230. These provisions are being made in consequence of anticipated pressures on the resources of Scottish public authorities for the duration of the coronavirus outbreak. The main purpose is to temporarily extend the existing statutory time periods under which a Scottish public authority (within the meaning of the Freedom of Information (Scotland) Act 2002 (“FOISA”)) must respond to a request for information and to enable the Scottish Information Commissioner (“the Commissioner”) to take matters relating to coronavirus into consideration where there has been a failure by the Scottish public authorities to respond.
231. [Paragraph 3](#) of schedule 6 of the Act modifies sections 10 and 21 of FOISA. Those sections specify maximum time periods within which Scottish public authorities must respond to requests for information and requirements for review. Currently, the maximum period is 20 working days after receipt of the request or requirement. Paragraph 3 instead substitutes a maximum period of 60 working days.
232. Paragraph 3 also deals with a special case. Where requests are made to the Keeper of the Records of Scotland for information transferred by another Scottish public authority, a maximum period of 70 working days is substituted for the current period of 30 working days.
233. Paragraph 4 dis-applies the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016 ([S.S.I. 2016/346](#)). These Regulations presently modify the maximum period for independent special schools and grant aided school so that days which are not school days are left out of account in calculating the usual 20 working day period. These schools will be treated in the same way as other Scottish public authorities, with a maximum period of 60 working days to respond.
234. Paragraph 5 confers a power on the Scottish Ministers by direction to specify circumstances in which a Scottish public authority (other than the Scottish Ministers) may extend the 60 working day period.
235. This power can only be exercised where the Scottish Ministers are of the view that doing so will enable Scottish public authorities to better utilise resources to respond to coronavirus. Before they do so, they must consult the Scottish Information Commissioner.
236. Paragraph 5(3) imposes further conditions on the use of the direction-making power. Such a direction must specify the maximum period by which the 60 working day period may be extended (which is not to exceed 40 working days). It must also require a Scottish public authority to notify the applicant of its decision to extend promptly, and in any event before the original 60 working day period expires. Such a notice must also explain the authority’s reasons for extending the period, and it must tell the applicant about their right to require the authority to review its decision, or to appeal to the Commissioner, as the case may be.
237. Applicants can apply to the Scottish Information Commissioner for a decision about whether a Scottish public authority has complied with Part 1 of FOISA in dealing with their request for information. Under the current legislation, where the Commissioner decides that an authority has failed to comply with Part 1 of FOISA, the decision notice must specify this and the Commissioner has no discretion to take into account the reasons for the failure.

238. Paragraph 6(2) enables the Commissioner to take into account the impact of coronavirus on the authority where an authority has failed to comply with the timescales set out in section 10(1) and 21(1) of FOISA. If the Commissioner is satisfied that the failure was due to the effect of coronavirus on the authority, and that it was reasonable in all the circumstances for the authority not to comply with the timescales, paragraph 6(2) gives the Commissioner discretion to find that the authority has not failed to comply with Part 1 of FOISA.
239. At present, section 74(1)(a) of FOISA specifies that notices have to be delivered or posted. Paragraph 7 of schedule 6 permits formal notices under FOISA to be given electronically.

### **Part 3 - Duties in respect of reports and other documents**

#### **Power to postpone publication and laying of reports**

240. Paragraph 8 applies to any statutory duty, within the competence of the Scottish Parliament to amend, that requires the Scottish Ministers or a Scottish public authority to publish a report in connection with the exercise of their functions on or by a particular date.
241. Subparagraph (2) provides that the Scottish Ministers or a Scottish public authority may decide to postpone complying with such a duty if they consider that doing so would impede their ability to take action to combat coronavirus. If they decide to do so, under subparagraph (3) they must publish a statement to that effect, on or before the date the report is due or as soon as reasonably practical afterwards. Subparagraph (4) requires the statement to indicate that the report will be published once the coronavirus outbreak is over, in accordance with paragraph 10.
242. Subparagraph (5) provides that the power to postpone reporting does not apply to any duty contained in the Act itself, to accounts or associated documents required under section 19 or 20 of the Public Finance and Accountability (Scotland) Act 2000 (see paragraph 15), or to documents covered by paragraph 9.

#### **Power to publish or make available documents for inspection electronically**

243. Paragraph 9 applies to any statutory duty, within the competence of the Scottish Parliament to amend, that requires the Scottish Ministers or a Scottish public authority to physically publish or publicise a document, make a document available for physical inspection, give notice of where such a document can be inspected, or lay a document before the Scottish Parliament.
244. Subparagraph (2) provides that the Scottish Ministers or a Scottish public authority may decide not to comply with such a duty, if they consider that doing so may give rise to a significant risk of transmission of coronavirus (for example by providing public access to an office) or would be ineffective or inappropriate due to action taken to control the incidence or transmission of coronavirus (for example, placing copies in libraries that are closed). Where they decide not to comply with the duty, under subparagraph (3) they must, if possible, publish, give notice or make the document or information available electronically. If they consider this is not possible, they must publish a statement to that effect, as required by subparagraph (4).
245. Where a duty to which this paragraph applies includes a requirement to make a statement to the Scottish Parliament about the document on a particular date or within a particular period, subparagraph (5) provides that it is sufficient for the statement to be made as soon as is reasonably practicable.

## **Resumption of duties in relation to reports and documents**

246. Subparagraphs (1) and (2) of paragraph 10 provide that, where the Scottish Ministers or a Scottish public authority have decided under paragraph 9 to postpone complying with a duty to publish a report, they must publish that report as soon as reasonably practicable, and in any case within 6 months after paragraph 9 Act ceases to have effect.
247. Subparagraphs (3) and (4) deal with what the Scottish Ministers or a Scottish public authority must do once the coronavirus outbreak is over, or paragraph 9 has ceased to have effect, if they have decided under paragraph 10 not to comply with a duty to publish, lay, notify or make a document available physically. If the duty was to lay a document before the Scottish Parliament, they must do that as soon as reasonably practicable. In any other case, they must either take steps to comply with the duty, or publish a statement setting out why they are not complying. This may be, for example, that they have published it electronically and they consider it is not necessary to do any more, or that the information is no longer relevant.

## **Part 4 – Local authority meetings**

248. Paragraph 13 modifies section 50A of the Local Government (Scotland) Act 1973. This modification creates a new provision which provides that, for the duration of the coronavirus crisis, local authorities have the power to exclude the public from its meetings if the local authority considers that, if members of the public are present, this would create a real or substantial risk to public health, specifically relating to infection or contamination by coronavirus.
249. Paragraph 14 modifies section 50H (2)(b) of the Local Government (Scotland) Act 1973, and provides that the existing requirement for local authorities to provide hard copies or extracts of a document requested by a member of the public in their offices will no longer be a compulsory obligation upon a local authority, and allows the local authority to provide such hard copies or extracts only if it is reasonably practicable to do so.

## **Part 5 – Duties under the Public Finance and Accountability (Scotland) Act 2000**

250. Paragraph 15 of Schedule 6 provides that Scottish Ministers may by regulations make provision modifying the effect of the Public Finance and Accountability (Scotland) Act 2000 as it applies to accounts that are required under section 19 or 20 of that Act for the financial year ending with 31 March 2021. Paragraph 15(2) of that schedule goes on to provide that in particular, the regulations may make provision about the timescales in which accounts must be provided, the provision of information and documents by electronic means and the manner in which accounts and any other relevant documents are to be published.
251. This last provision is in similar terms to the approach taken to modification of statutory duties in relation to reports and other documents covered in Part 3 of that schedule from which accounts or associated documents required under section 19 or 20 of the Public Finance and Accountability (Scotland) Act 2000 are excluded.

## **Schedule 7 - Other measures in response to coronavirus**

### **Social security**

252. Paragraphs 1 to 5 of schedule 7 make provision to modify, and modify the effect of, certain provisions of the Social Security (Scotland) Act 2018 (“the 2018 Act”) that relate to statutory timescales that are likely to be affected by the coronavirus.
253. Paragraph 2 modifies section 41 of the 2018 Act, which provides for the right to request re-determination of a decision made by Social Security Scotland. Section 41(2) provides that a request for a re-determination is valid only where certain conditions are satisfied,

and subsection (4) of that section sets out the condition that the request must be made within specified timescales.

254. Paragraph 3 modifies section 48 of the 2018 Act, which provides the statutory timescales for bringing an appeal under section 46 of that Act against a determination made by the Scottish Ministers, so that they are also to be read with new section 52A.
255. Paragraph 4 inserts two new sections into the 2018 Act. Those are section 52A (re-determination and appeal deadlines) and section 52B (applications for assistance).
256. New section 52A(1) provides that where a person has requested a re-determination after the deadline set out in regulations under section 41 of the 2018 Act the request will be valid, even if received after the end of the period of a year after the day on which the individual was informed of the original determination, where it is considered that the request was made late for a good reason that is related to coronavirus.
257. New section 52A(2) provides that an appeal may be brought under section 46 of the 2018 Act at any time after the expiry of the 31 day period set out in section 48(2) (a), including after the deadline of one year set out in section 48(1)(c), if the First-tier Tribunal gives permission on the basis that there is a good reason for the application not being made sooner which is related to coronavirus.
258. New section 52A(3) provides that any provision of the Scottish Tribunal Rules that would have the effect of precluding an appeal from being brought under section 52A(2) (for example any time limit for giving a notice of appeal) is to be disregarded to the extent it would have that effect.
259. New section 52B applies in respect of any provisions in regulations made under Chapter 2 of the 2018 Act that make a person's eligibility for assistance conditional on their application being made by a particular time or ahead of a certain event. In accordance with subsection (2), the person who is determining the applicant's eligibility may treat the application as having been made by the required timescale if the person is satisfied that the reason for the application not being made ahead of the deadline or event is related to coronavirus.
260. Section 52B(3) makes clear the relaxation on the requirements described above includes those that set out that entitlement to assistance is conditional on a person's age at the time of making an application. That means that where an individual is unable due to the impact of coronavirus to apply for assistance at a time when they satisfy the age-related requirement (e.g. the requirement to be aged under the age of 19 on the day an application for Young Carer Grant is made) they will be entitled to apply late and have their entitlement determined as though the application had been made when those age-related requirements were satisfied.
261. Paragraph 5 modifies section 43 of the 2018 Act in two ways. Subsection (2) is modified so as to read "...the determination as soon as reasonably practicable." A new subsection (5A) is also inserted. Section 43 sets out a duty to re-determine applications where this is requested by the individual, and subsection (5) of that section provides that the period allowed for re-determination is to be prescribed by the Scottish Ministers in regulations. The effect of the modification made by paragraph 5 is that the periods prescribed in those regulations are to be read as though extended by 9 weeks. This has the effect of giving Social Security Scotland longer to make a re-determination as a result of disruption caused by the Coronavirus.

### **Irritancy clauses in commercial leases**

262. Section 4 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 provides that a landlord must give a tenant at least 14 days' notice before terminating a commercial lease due to non-payment of rent. Paragraph 7 of schedule 7 provides that section 4 of the 1985 Act has effect as if this period is 14 weeks. This will mean that

landlords will have to give at least 14 weeks' notice to tenants before being able to terminate a commercial lease for non-payment of rent by the tenant.

263. The provisions enable the Scottish Ministers to alter the new 14 week period by regulations. They also make it clear that the new 14 week period applies irrespective of whether a notice has already been served (provided the 14 day period has not already expired) and irrespective of whether the circumstance which would entitle the landlord to terminate the lease already exist.

### **Duration of planning permission**

264. Paragraph 9 of schedule 7 provides that section 58 of the Town and Country Planning (Scotland) Act 1997 is to have effect as if new subsections (3B) to (3E) were inserted into it. In terms of section 58(1) and (2) planning permission lapses if development is not begun by the end of a specified period, usually of 3 years, from the date of the grant of planning permission. Subsection (3B) has the effect that if a planning permission would under the normal rules under subsection (1) or (2) lapse during the "emergency period" then the period within which development is to be commenced is extended. Subsection (3C) defines the "emergency period" as the period of 6 months after the provision comes into force. This means that a planning permission due to expire within the emergency period would instead lapse at the end of the extended period unless development has already commenced. Subsection (3C) also defines the "extended period" as the period of 12 months beginning with the date on which the provisions come into force. Subsections (3D) and (3E) provide the Scottish Ministers with the power to amend those periods if required through regulations subject to the negative procedure.
265. Paragraph 10 makes equivalent provisions in respect of section 59 of the Town and Country Planning (Scotland) Act 1997 and planning permission in principle. It provides that section 59 has effect as if new subsections (8A) to (8E) were inserted. Development authorised by planning permission in principle cannot be begun until all the requisite approvals needed in accordance with conditions imposed on the grant of planning permission have been obtained. In terms of section 59(4) planning permission in principle lapses if development is not begun by the end of a specified period, usually of 2 years, from the date on which the last requisite approval is obtained. A different period may be substituted by direction given under section 59(5). Subsection (8A) has equivalent effect in respect of planning permission in principle as new subsection (3B) has for other planning permissions. It means that if a planning permission in principle would lapse during the emergency period it would not under subsection (8A) lapse until at the end of the extended period if the development to which the permission relates had not begun.
266. New subsection (8B) provides for the situation where the last date by which an application for a requisite approval can be made is within the emergency period then that application can be made before the end of the extended period.
267. New subsections (8C), (8D) and (8E) define "emergency period" and "extended" period and provide the Scottish Ministers with the power to amend those periods if required through regulations subject to the negative procedure.

### **Land registration**

268. Paragraphs 11 to 19 of schedule 7 of the Act relate to the Land Register and Register of Sasines, and make provision for (i) the protected period of advance notices impacted by the closure of the application record and Register of Sasines following the coronavirus outbreak to be extended, and (ii) registration in the Land Register and Register of Sasines to proceed on the basis of a copy of a traditional paper deed submitted to the Keeper of the Registers through electronic means.

Electronic delivery of copy of deed to Registers of Scotland

269. The paragraphs under this heading modify the Land Registration etc. (Scotland) Act 2012 and the Land Registers (Scotland) Act 1868 for the duration of the Act, to make provision for registration in the Land Register and recording in the Register of Sasines to proceed on a copy of a deed submitted to the Keeper by electronic means.
270. Paragraphs 11 and 12 make provision for the Land Register, adjusting the effect of section 21 of the 2012 Act. The new section 21(5) sets out that a copy of a deed submitted electronically is sufficient to allow registration to proceed. Inserted section 21(6) provides that this applies when the means and form for electronic submission of copy deeds are specified as acceptable on the Keeper's website. Inserted section 21(7) sets out the forms submission by electronic means can take, such as attachment to an email.
271. Paragraphs 13 and 14 make similar provision for the Register of Sasines, adjusting the effect of the 1868 Act. For the purposes of the Act, paragraph 14(a) removes reference to electronic documents to allow section 6A of the 1868 Act to apply to copies of deeds transmitted electronically. Paragraph 14(b) makes other temporary modifications as for the Land Register. Inserted section 6A(6) sets out that a copy of a deed submitted electronically is sufficient to allow recording in the Register of Sasines to proceed. Inserted section 6A(7) provides that this applies when the means and form for electronic submission of copy deeds are specified as acceptable on the Keeper's website. Inserted section 6A(8) sets out the forms submission by electronic means can take.

#### **Period of Effect of Advance Notices**

272. The paragraphs under this heading set out how the protected period provided by advance notices is extended for advance notices affected by the closure of the application record in the Land Register and Register of Sasines on 24th March 2020.
273. Paragraph 15 applies paragraph 16 to advance notices already entered in the application record and which still had effect on 24th March 2020.
274. Paragraph 16 sets out that the protected period provided by such an advance notice will be extended until 10 days after the day on which the application record fully re-opens (by a declaration of the Keeper to that effect).
275. Paragraph 17 applies paragraph 18 to advance notices already recorded in the Register of Sasines and which still had effect on 24th March 2020.
276. Paragraph 18 sets out that the protected period provided by such an advance notice will be extended until 10 days after the day on which the Register of Sasines fully re-opens.
277. Paragraph 19 makes clear that, while the Act applies, the 2012 Act is to be regarded as having been modified by the adjustments to section 58 of the 2012 Act so:
- the protected period for advance notices which had effect on a day the application record and Registers of Sasines are closed to the making of all entries is extended until the later of either the 35 day period provided for in section 58(1) or 10 days after the date on which the application record or Register of Sasines fully re-opens;
  - the protected period for advance notices entered onto the application record or recorded in the Register of Sasines during a period in which the application record and Register of Sasines is partially closed is extended until the later of either the 35 day period provided for in section 58(1) or 10 days after the date on which the application record or Register of Sasines fully re-opens.

#### **Anatomy Act 1984**

278. Paragraphs 20 to 22 of schedule 7 modify the Anatomy Act 1984 ("the 1984 Act") to extend the periods for which a body or part of a body can be retained for the purpose of anatomical examination and enables such bodies or parts of bodies to be retained after examinations have been concluded. The 1984 Act is modified for the



duration of this legislation to provide (a) that the statutory period in section 4B (lawful examinations: further provision) and the 3 year limit in section 5 (control of possession after examination) of the 1984 Act be extended until paragraph 20 ceases to have effect and (b) by dis-applying section 5(1)(b) of the 1984 Act to make it lawful to retain possession of a body or part of a body after the anatomical examination has concluded. The purpose of the modifications is to extend the 3 year time limit to ensure that during the period of the coronavirus pandemic, licence holders for example in university anatomy departments are not committing an offence by retaining a body beyond the statutory 3 years.

- 279. Paragraph 21 modifies section 4B (lawful examinations: further provision) of the 1984 Act by inserting a new subsection (3A) providing that should the statutory period expire during the period in which paragraph 21 of schedule 7 of the Act has effect the period will instead expire on the day that paragraph ceases to have effect.
- 280. Paragraph 22 modifies section 5 (control of possession after examination) of the 1984 Act by omitting subsection (1)(b) to remove the restriction on retaining bodies or parts of bodies after anatomical examinations have concluded and inserting a new subsection (1A) to provide that should the period referred to in section 5(1)(c)(iii) (length of time an imported body can be retained) elapse during the period when the Act has effect the period is to be treated as elapsing instead on the day on which paragraph 22 of schedule 7 ceases to have effect.

### **Scrutiny of subordinate legislation in urgent cases**

- 281. Paragraphs 23 to 30 of schedule 7 allow subordinate legislation which is subject to the affirmative procedure to be instead made under a made affirmative procedure where necessary by reason of urgency.
- 282. Paragraph 25 dispenses with a number of possible requirements which would otherwise apply before making the subordinate legislation.
- 283. Paragraph 27 retains the requirement in affirmative procedure for a positive vote by the Scottish Parliament in respect of the subordinate legislation. Without a resolution approving the subordinate legislation, it expires 28 days after it is made. Paragraph 28 sets out how that 28 day period should be calculated.

### **Business improvement districts**

- 284. Paragraph 31 of schedule 7 extends the duration of certain business improvement district partnerships (BIDs) which operate to deliver local arrangements, as provided for by the Planning etc. (Scotland) Act 2006. That Act sets out a statutory process to initiate a BID, that requires a ballot of affected businesses within the BID area, following consultation on a BID proposal and business plan. BIDs can operate for a maximum of 5 years before a re-ballot.
- 285. The Act applies an extension to any BID that is in force when the paragraph comes into force and is due to end before 31 March 2021, unless that BID has already held a ballot that has approved its renewal: see subparagraphs (1) and (2). Subparagraph (3) provides that such arrangements are extended to 31 March 2021, including their funding arrangements. In certain circumstances a local authority or the BID partnership can terminate BID arrangements; that possibility is preserved by subparagraph (4).

### **Muirburn**

- 286. Paragraphs 32 and 33 of schedule 7 modify section 23 of the Hill Farming Act 1946 in order to prevent muirburn taking place during the coronavirus outbreak. The Act suspends the muirburn season, as set out in section 23 of the 1946 Act, which normally runs from the 1st of October until the 15th of April.



*These notes relate to the Coronavirus (Scotland) Act  
2020 (asp 7) which received Royal Assent on 6 April 2020*

287. The Act suspends the muirburn season during the relevant period. The relevant period is the period in which paragraphs 32 and 33 of schedule 7 of the Act (which modifies section 23 of the 1946 Act) are in force.