

## POLICY NOTE

### THE CORONAVIRUS (SCOTLAND) ACTS (EARLY EXPIRY OF PROVISIONS) REGULATIONS 2020

SSI 2020/249

The above instrument was made in exercise of the powers conferred by section 13 of the Coronavirus (Scotland) Act 2020 and section 10 of the Coronavirus (Scotland) (No.2) Act 2020. The instrument is subject to the negative procedure.

**The purpose of the instrument is to expire early provisions in the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 on 29 September 2020. Part 1 of each of those Acts expires on 30 September 2020. The Scottish Ministers intend to lay a draft of the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 seeking to amend these expiry dates to 31 March 2021. This would have the effect that Part 1 of each of those Acts, other than the provisions that have already been expired, would then expire on 31 March 2021.**

#### Legislative Background

1. The Coronavirus (Scotland) Act 2020 (the ‘first Scottish Act’) came into force on 7 April 2020 (except for one provision) and the Coronavirus (Scotland) (No.2) Act 2020 (the ‘second Scottish Act’) came into force on 27 May 2020. The Acts have provided powers and measures which have helped to protect the public, maintain essential public services and support the economy in the face of the unprecedented public health and economic challenges created by the pandemic. This includes protections for individuals in areas such as housing, measures to support the ongoing operation of the justice system, and support for public bodies in their response to coronavirus (COVID-19) such as adjustments to deadlines for reports and accounts.

2. As set out under section 12 of the first Scottish Act, and section 9 of the second Scottish Act, Part 1 of both Acts expires on 30 September 2020. On 11 August, the Cabinet Secretary for Constitution, Europe and External Affairs confirmed the Scottish Government’s intention to lay draft regulations for Parliament to consider which would seek to extend the expiry date of Part 1 of both Scottish Coronavirus Acts from 30 September 2020 to 31 March 2021.

#### Policy Objectives

3. During the passage of both Bills, Ministers committed to expiring provisions of both Scottish Acts as soon as appropriate. As part of the Scottish Government’s regular reviews of provisions and as part of the preparations for the potential extension of the Acts, consideration has been given to whether each individual provision continues to be needed beyond 29 September 2020.

4. It has been judged that the provisions set out in these Regulations will no longer be needed and can be expired early.

5. Part 1 of each of the Scottish Acts expires on 30 September 2020. Section 13 of the first Scottish Act and section 10 of the second Scottish Act allow the Scottish Ministers to make regulations expiring any provision of Part 1 of each of the Scottish Acts at a date earlier than that which would otherwise apply.

6. The expiry date of Parts 1 of the Scottish Acts can be extended but such an extension applies to the entirety of the Part 1 provisions. Neither Scottish Act makes provision for the extension of individual provisions. The Scottish Ministers are seeking to extend the expiry date for Part 1 of both Acts and will lay in draft the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 to amend the expiry dates from 30 September 2020 to 31 March 2021.

7. The provisions of both Acts which are expired early on 29 September 2020 will accordingly not benefit from the extension of Part 1 of both Scottish Acts, should this be agreed to by the Scottish Parliament.

8. A number of these provisions in both Scottish Acts that are being expired early are provisions which made amendments to other legislation. For example, paragraph 1 of schedule 3 of the second Scottish Act made amendments to the Climate Change (Scotland) Act 2009. The provisions in the second Scottish Act which made these amendments are no longer needed. This is due to the operation of section 15(2)(d) of the Interpretation and Legislative Reform (Scotland) Act 2010 which means that the expiry of these provisions will not affect the amendments made to other legislation by these provisions. For example, expiring paragraph 1 of schedule 3 of the second Scottish Act will not affect the amendments made to the Climate Change (Scotland) Act 2009 by that paragraph and those amendments will continue in force notwithstanding the expiry of paragraph 1.

9. The effect of the early expiry of these provisions is just to remove the spent provisions in each of the Scottish Acts. The purpose of the early expiry of such provisions, even though this does not affect the amendments made by those provisions, is to respect the commitment given by the Scottish Ministers to seek to expire early provisions as soon as is appropriate. It is considered appropriate to expire these provisions as they are considered to no longer be needed and this will aid clarity in the statute book. The provisions that are being expired that come within this category are:

- paragraphs 1(a), 2, 3 and 4 of schedule 7 of the first Scottish Act,
- paragraphs 1 to 4 of schedule 3 of the second Scottish Act,
- paragraphs 1, 6, 7 and 8 of schedule 4 of the second Scottish Act.

10. The early expiry of these provisions has no impact on human rights, children's rights or equality as they are just expiring spent provisions and this does not affect the amendments made to other legislation by the provisions.

11. The following sections cover each of the provisions of the first Scottish Act and the second Scottish Act which are expired early on 29 September 2020.

### ***Children in secure accommodation***

*Coronavirus (Scotland) Act 2020 schedule 3 - Children and vulnerable adults – Part 1: Children: paragraph 6*

12. Schedule 3 contains a number of provisions covering child protection, children's hearings and looked after children. Paragraph 6, which makes provision covering children in secure accommodation, is now to expire.

13. Schedule 3, paragraph 6 amends the Secure Accommodation (Scotland) Regulations 2013 to extend the maximum timescales for which a child may be kept in secure accommodation without the authority of a Children's Hearing or a Sheriff from 72 to 96 hours. This also allows the Principal Reporter the discretion to extend the period within which a Children's Hearing must be held by 24 hours (from 72 hours to 96 hours) where a child is placed in secure accommodation where it is not practicable to meet the existing timescale.

14. The provision has been used on a minimal number of occasions and it is the Scottish Government's view that reverting back to the original legislative arrangement of expiry of 72 hours instead of 96 hours will be able to be managed within operating conditions expected to be in place by 29 September 2020.

15. The legislation impacts on the Scottish Children's Reporter Administration (SCRA) and on the Chief Social Work Officers of local authorities, and therefore consultation has taken place on the decision to expire this provision. SCRA has recorded only a very small number of cases where a young person has been kept in secure accommodation for an additional 24 hours before coming to a children's hearing. SCRA have confirmed that should the provision be expired, timescales could still be managed if the situation changed and there were for example local outbreaks/further lockdown, and that this provision is no longer needed.

16. Rights and equality implications were fully considered during the development of the provision as part of the original Bill development process, and no additional rights and equality implications have been identified in relation to expiring the provision. This will be reverting back to standard practice within the Children's Hearings system, which is already compliant with rights and equality obligations. One positive impact in terms of children's rights of reverting back to normal practice is that this will provide a quicker response, which whilst minimal in terms of the time period in question, is more child friendly.

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

*Coronavirus (Scotland) Act 2020 schedule 3 - Children and vulnerable adults – Part 2: vulnerable adults: paragraph 11(1)*

17. Schedule 3, Part 2 of the Act covers vulnerable adults. Paragraph 11(1) of schedule 3 has not been commenced and is expired.

18. Paragraph 11(1) amends section 13ZA of the Social Work (Scotland) Act 1968 which relates to the provision of community care services to incapable adults, including moving the adult to residential accommodation. Paragraph 11(1) removes the requirement on the local authority to consult the adult and interested parties, including those authorised under a guardianship or power of attorney. This paragraph was not commenced.

19. In considering whether this paragraph should be expired early, the Scottish Government has examined very carefully the considerations in relation to human rights. At the beginning of the pandemic there was seen to be a need for this provision as the possible influx of Covid-19 patients into acute hospital wards would amount to a risk to the life of adults lacking capacity, who are often in these wards awaiting a longer term move e.g. to a care home. The risk of exposure and infection to these adults was seen to justify the removal of the rights of adults and interested parties to be consulted under section 13ZA of the 1968 Act before any move.

20. However, even at the height of the pandemic, the situation did not arise where there was such an influx of COVID-19 patients to acute wards that would place these vulnerable adults at risk of infection. Therefore, in the absence of that justification, the provision was never commenced. There is now much more awareness, preparedness and precautions regarding COVID-19, especially in relation to care homes, and there is no expectation that these provisions will ever be needed.

21. In relation to the ‘stop the clock’ provisions for guardianship orders and section 47 certificates under the Adults with Incapacity (Scotland) Act 2000 contained in paragraphs 11(2) and 11(3) of schedule 3 part 2, these are to be extended and suspended. In contrast to paragraph 11(1), these provisions were commenced to protect vulnerable adults at a time when the capacity of relevant professionals (e.g. medical practitioners) and court capacity to facilitate renewals was limited due to the pandemic. Given that it is no longer the peak of the pandemic, these provisions are no longer necessary and should be suspended. However should there be a resurgence of COVID-19, the conditions may arise where these provisions could be revived.

22. The Scottish Government has been considering the discharge process of adults lacking capacity to ensure compliance with United Nations Convention on the Rights of Persons with Disability. The Scottish Government has been working with Health and Social Care Partnerships on improving discharge pathways, ensuring that the adult and interested parties are fully involved and consulted. This has produced positive results and this work continues.

23. Consultation on the provisions in paragraph 11(1) was undertaken with the Law Society of Scotland, Social Work Scotland, COSLA, the Mental Welfare Commission, Health and Social Care Scotland and the Centre for Mental Health and Capacity law at Edinburgh Napier University.

24. No additional implications for children’s rights or equality have been identified in relation to the decision to expire this paragraph.

### *Social security*

*Coronavirus (Scotland) Act 2020 schedule 7, paragraphs 1(a), 2, 3 and 4*

25. Paragraphs 1(a), 2, 3 and 4 made textual amendments to the Social Security (Scotland) Act 2018, without limit of time.

26. They are already spent and their expiry will have no impact on the relaxation of timescales for individuals to apply for certain forms of assistance, and to request a re-determination or appeal, when the delay is related to coronavirus-related disruption. The relaxation will continue to benefit individuals whilst there is coronavirus-related disruption.

***Reports under the Climate Change (Scotland) Act 2009***

*Coronavirus (Scotland) (No.2) Act - schedule 3, paragraph 1 - Reports, etc. under the Climate Change (Scotland) Act 2009*

27. These are spent provisions, which upon commencement immediately and permanently amended the Climate Change Act (Scotland) Act 2009 to amend the deadlines associated with a Citizens Assembly and a national Nitrogen Balance Sheet.

28. The two extended deadlines in the amended Climate Change (Scotland) Act 2009 remain time-dated and so the overall effect of the provision will remain temporary. For the Citizens Assembly on Climate Change, this is still required to have reported by the end of February 2021 or - if necessary for a reason related to COVID-19 - as soon as reasonably practicable thereafter. For the Nitrogen Balance Sheet, this is still required to have been established by 23 March 2022.

***Accounts of Registered Social Landlords***

*Coronavirus (Scotland) (No.2) Act - schedule 3, paragraph 2 - Accounts of registered social landlords*

29. This paragraph provides for an extension of deadline for submission of accounts of Registered Social Landlords (RSLs), in order to provide RSLs with additional time to submit audited annual accounts to the Scottish Housing Regulator and protect RSLs from risk of prosecution and criminal conviction where they are unable to submit accounts within existing deadlines, until COVID-19 restrictions are relaxed.

30. The provision also disapplies the duty for RSLs to submit audited annual accounts to the Scottish Housing Regulator within 6 months of the end of the period to which they relate for the financial year ending 31 March 2020, and puts in place an alternative duty for that year for audited accounts to be provided within 9 months.

31. This is a spent provision which has made a permanent amendment to other legislation and can now be expired. Paragraph 2 of schedule 3 amends section 70 of the Housing (Scotland) Act 2010 and expiring paragraph 2 will still retain the amendments to section 70.

### ***Accounts under the Public Finance and Accountability (Scotland) Act 2000***

*Coronavirus (Scotland) (No.2) Act - schedule 3, paragraph 3 - Accounts under the Public Finance and Accountability (Scotland) Act 2000*

32. This paragraph amends paragraph 15 of schedule 6 of the Coronavirus (Scotland) Act 2020 dealing with accounts under the Public Finance and Accountability (Scotland) Act 2000.

33. As this paragraph directly amended the first Scottish Act, this provision is therefore considered a spent provision which can be expired.

### ***Housing (Scotland) Act 1987: statement under section 33B***

*Coronavirus (Scotland) (No.2) Act - Schedule 3, paragraph 4 - Housing (Scotland) Act 1987: statement under section 33B*

34. This paragraph amended section 33B of the Housing (Scotland) Act 1987 to extend the period within which the Scottish Ministers must publish a statement on exercising their power, in section 33A of the 1987 Act, to modify local connection. The extension provided the necessary flexibility to postpone the launch of the consultation on the Ministerial statement, which is required under section 33B of the 1987 Act, so that local authorities and third sector frontline services could focus their effort on accommodating and supporting people, and preventing further homelessness, during the key pressure points of the coronavirus outbreak.

35. The opportunity was taken to postpone the consultation which was originally planned for May 2020 until pressures eased and the consultation has subsequently been launched on 3 August 2020.

36. The provision is considered a spent provision that can therefore now be expired.

### ***UEFA European Championship***

*Coronavirus (Scotland) (No.2) Act - schedule 4, paragraph 1 - UEFA European Championship*

37. This paragraph amended the UEFA European Championship (Scotland) Act 2020 ('the 2020 Act'), as follows:

- Changed the dates of Championship period, definition of Championship and repeal date, as these currently refer to dates in 2020.
- Corrected a European Convention on Human Rights compliance issue with, and exception to, the ticket touting offence for auctions of match tickets where the proceeds are given to charity.

38. This paragraph permanently amended the 2020 Act. As such, it has now had its full intended effect and can now be expired.

### ***Land and Buildings Transaction Tax: additional amount***

*Coronavirus (Scotland) (No.2) Act - schedule 4, paragraph 6 - Land and buildings transaction tax: additional amount*

39. This paragraph, when commenced, permanently amended schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013 ('the LBTT Act'). As that amendment has been made, the provision is considered to be spent and can now be expired. Expiry of the provision will not affect this permanent amendment to the LBTT Act, including with regard to the delegated powers provided.

40. The amendments to the LBTT Act are however temporary in nature. The amendments apply to a fixed period of transactions with an effective date between 24 September 2018 and 24 March 2020. Only the transactions within this specified period, or within any extended period specified through the use of the relevant Order-making power, will benefit from the increased period of 36 months to dispose of an additional dwelling and benefit from a repayment of LBTT.

### ***Non-domestic rates relief***

*Coronavirus (Scotland) (No.2) Act - schedule 4, paragraphs 7 and 8 – Non-domestic rates relief*

41. Paragraph 7 amends section 153 of the Local Government etc. (Scotland) Act 1994 (power to prescribe amount of non-domestic rate) to enable Ministers to make regulations in respect of financial year 2020-21 to reduce or remit non-domestic rates liabilities. Paragraph 8 amends schedule 1 of the Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 (S.S.I. 2020/101) to provide an additional class of businesses to be given relief under those regulations, being those in the news publishing industry.

42. As paragraphs 7 and 8 amended other legislation, these paragraphs are now spent and so can be expired. The amended regulations enabled by the provision only apply "during the Financial Year 2020-21" so are also in themselves temporary by design.

### **Consultation**

43. A formal public consultation exercise has not been undertaken in relation to this instrument due to the timescales in which decisions on extension of the Scottish Acts and expiry of provisions not to be covered by an extension have had to be made. However the Scottish Government has informally consulted with public bodies and other stakeholders on development of certain provisions within these Regulations. Detail of this is provided where applicable in the sections above.

## **Impact Assessments**

44. No impact assessments have been completed for this instrument, however in development of the instrument the impacts assessments undertaken at the time of the introduction of both Scottish Acts have been reviewed in order to determine whether any new or additional impacts would result from expiry of the provisions covered by the Regulations. Detail on impacts, including human rights, children's rights and equality impacts, has been included in the relevant sections above.

## **Financial Effects**

45. The Cabinet Secretary for Constitution, Europe and External Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Directorate for Constitution and Cabinet

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