

## POLICY NOTE

### THE CORONAVIRUS (SCOTLAND) ACTS (SAVING PROVISION) REGULATIONS 2022

SSI 2022/261

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 12(9) of the Coronavirus (Scotland) Act 2020<sup>1</sup> (“the First Scottish Act”) and section 9(9) of the Coronavirus (Scotland) (No. 2) Act 2020<sup>2</sup> (“the Second Scottish Act”) (together – “the Scottish Coronavirus Acts”), and all other powers enabling them to do so. The instrument is subject to the negative procedure.

#### **Purpose of the instrument**

The provisions in Part 1 of each of the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 expire at the end of 30 September 2022.

These Regulations contain saving provision following expiry of certain provisions in the Scottish Coronavirus Acts. These are to:

- save the definition of coronavirus in relation to certain provisions in social security legislation (Social Security (Scotland) Act 2018);
- save the 12 month period in relation to completion of community payback orders with unpaid work and other activity requirements imposed before the end of 30 September 2022;
- make a number of saving provisions for alcohol and civic licensing regimes; and
- enable the continued processing and payment of claims on the Social Care Staff Support Fund.

#### **Legislative background**

2. The First Scottish Act came into force on 7 April 2020 (except for one provision) and the Second Scottish Act came into force on 27 May 2020. The Scottish Coronavirus 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 and ongoing public health and economic challenges created by the coronavirus pandemic.

3. As set out under section 12 of the First Scottish Act, and section 9 of the Second Scottish Act, Part 1 of each of the Scottish Coronavirus Acts were due to expire on 30 September 2020, with the potential to be extended for two further periods of six months to 30 September 2021, subject to the approval of the Scottish Parliament. On 29 September 2020 and 30 March 2021, regulations came into force extending the expiry date of Part 1 of each of the Scottish Coronavirus Acts to 31 March 2021 and 30 September 2021 respectively<sup>3</sup>.

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1 [Coronavirus \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2020/01/01/51501_1)

2 [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2020/01/01/51501_2)

3 [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2020/01/01/51501_3) and [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2021/01/01/51501_3)

4. The Coronavirus (Extension and Expiry) (Scotland) Act 2021<sup>4</sup> (“the Extension and Expiry Act”) amended the Scottish Coronavirus Acts to extend Part 1 of each Act until the end of 31 March 2022, with the potential for further extension by secondary legislation to the end of 30 September 2022, subject to the approval of the Scottish Parliament. On 30 March 2022, regulations came into force extending the expiry date of Part 1 of each of the Scottish Coronavirus Acts to 30 September 2022<sup>5</sup>.

5. The Extension and Expiry Act contained no provision to extend the Scottish Coronavirus Acts beyond the end of 30 September 2022 and so the remaining provisions in Part 1 of each of the Scottish Coronavirus Acts expire at the end of 30 September 2022. The Coronavirus (Recovery and Reform) (Scotland) Act 2022<sup>6</sup>, which was passed by the Parliament on 28 June 2022, makes changes in 35 legislative areas, many of which originated in the Scottish Coronavirus Acts and also in the UK Coronavirus Act 2020<sup>7</sup>.

6. Provisions in the Scottish Coronavirus Acts have been suspended or expired where they were no longer necessary or appropriate. Details are provided in the statutory reports that are published every two months on provisions in the Scottish Coronavirus Acts<sup>8</sup>.

### **Policy objectives**

7. These Regulations make saving provision for certain provisions in Part 1 of each of the Scottish Coronavirus Acts following expiry at the end of 30 September 2022. Details of the saving provision are set out below.

#### Definition of “coronavirus”

8. Part 2 of these Regulations makes saving provision in respect of the definition of “coronavirus” in sections 52A and 52B of the Social Security (Scotland) Act 2018 (“the 2018 Act”). This is to continue the meaning given by section 1 of the first Scottish Act, so that sections 52A and 52B of the 2018 Act continue to have the same effect after the first Scottish Act has expired.

9. The saving provision is needed to save the definition of “coronavirus” where it is deployed as a good reason to relax timescales for making of applications, requests for re-determination and appeals where they are made late for reasons due to coronavirus, so that those provisions continue to operate effectively beyond the expiry of Part 1 of the First Scottish Act.

#### Community payback orders

10. Part 3 of these Regulations makes saving provision for those who had an unpaid work or other work activity requirement imposed before the end of 30 September 2022. This will ensure that the extended timescale is protected in regard to orders imposed before 1 October, which is considered appropriate both in regard to clarity of expectations for individuals on orders and as services are still recovering.

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<sup>4</sup> [Coronavirus \(Extension and Expiry\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](#)

<sup>5</sup> [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2022 \(legislation.gov.uk\)](#)

<sup>6</sup> [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#)

<sup>7</sup> [Coronavirus Act 2020 \(legislation.gov.uk\)](#)

<sup>8</sup> [Coronavirus \(COVID-19\) legislation - gov.scot \(www.gov.scot\)](#)

11. The saving provision preserves the timescales that applied at the time the requirements were imposed, they help ensure services can be planned and delivered efficiently and may support completion of orders by individuals within expected timescales. Informal consultation was carried out with Social Work Scotland, Community Justice Scotland and COSLA on the proposed saving provision. They were all supportive of the proposed approach, which was noted as being logical and reasonable.

## Licensing

12. Parts 4 and 5 of these Regulations make a number of saving provisions in relation to the alcohol and civic licensing regimes. This is to ensure that the flexibility and discretion to administer the licensing regimes introduced by the First Scottish Act can be fairly removed and the pre-existing provisions, which contain strict timescales and deadlines, can be fairly reapplied.

13. In particular Part 4 of these Regulations make saving provision to section 1 of the First Scottish Act, saving the definition of “coronavirus” in order to support subsequent savings, that rely upon that definition. It makes further savings for provisions of that Act as they modify the following sections of the Licensing (Scotland) Act 2005 (“the 2005 Act”). Accordingly, it saves the following.

- The definition of “coronavirus” in section 147, in order to support the provisions of that Act which will continue to rely upon that definition given the further savings made.
- The modification to section 45 (provisional premises licence). Section 45 provides that a Licensing Board can grant a provisional premises licence, which if not confirmed within 4 years is treated as revoked. Section 45(7) allows for an extension to the 4 year period to be applied for. Paragraph 2(5) of schedule 5 of the First Scottish Act modified section 45 to require the Board, on the first application for an extension, to extend the 4 year period by 6 months if, in addition to being satisfied as to the matters mentioned in section 45(8), that the reason for the application relates to coronavirus. The modification is saved only in relation to an application for such an extension that was made before the end of September 2022.
- The modification to section 54 (dismissal, resignation, death etc. of premises manager) which provides additional time (28 days instead of 7 days) for the premises licence holder to notify the Licensing Board that any of the events in section 54(2) have occurred. It further saves the modification which provides 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 from the date of the section 54(2) event; that such an application can be made up to 3 months (or longer on request for a reason relating to coronavirus) from that date. The modification is saved only in relation to a section 54(2) event occurring before the end of September 2022.
- The modification to section 77 (period of effect of personal licence) which provides that where a personal licence renewal application is made and the Licensing Board has not determined the application before the expiry date, the licence will continue to have effect for a period of 6 months from its original date of expiry. This provides

additional time for a Licensing Board to determine an application. The modification is saved only where an application has already been made but has not yet been determined, and the licence has expired, but remains in effect immediately before the end of September because of the effect of the modification.

- The modifications to sections 9A (annual functions report) and 9B (annual financial report) which provide that if a Licensing Board cannot meet its required publication date for a reason relating to coronavirus that it can publish a statement to that effect within 3 months of the end of the financial year and must instead publish the reports within 9 months of the end of the financial year. The modification is saved in relation to the requirement that the Board must publish not later than 9 months after the end of the financial year which concluded in 2022. This means that a Licensing Board will still be able to delay publication until December 2022 where, for reasons relating to coronavirus it was unable to publish the report before 30 June 2022 and had published a notice to that effect prior to 30 June 2022.

14. Part 5 of these Regulations make a number of saving provisions in relation to the modifications made by the First Scottish Act to the Civic Government (Scotland) Act 1982 (“the 1982 Act”) and the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 (SSI 2006/43) (“the 2006 Order”). Accordingly, it saves the following modifications.

- It saves the modifications to section 3(1), (2) and (4) of the 1982 Act (discharge of functions of licensing authorities) that provide that a licensing authority has an additional three months to reach a final decision on a licence application before a licence will be deemed to have been granted, renewed or varied (as the case may be). The modification is saved only in respect of a relevant application made before the end of September 2022. Similar modifications are saved in relation to the 2006 Order only in respect of a relevant application made before the end of September and to ensure that the cross reference to section 3 on which the modifications in the 2006 Order are based, remain consistent before and after the end of September 2022.
- It saves the modifications made to schedule 1 (surrender of licences generally) and schedule 2 (provision relating to sex shops) of the 1982 Act, which extended the time limits in place during which a licence is required to be surrendered to the licensing authority. The modifications are saved only where the event that has given rise to the requirement to surrender the licence occurred before the end of September 2022.

15. Informal consultation has been carried out with key licensing stakeholders (The Society of Local Authority Lawyers and Administrators in Scotland) who provided some light touch feedback and were comfortable with the policy intent.

#### Social Care Staff Support Fund

16. Part 6 of these Regulations makes saving provision in respect of the Social Care Staff Support Fund. It allows for the processing and payment of claims on the Fund in respect of financial hardship experienced on or before 30 September 2022 by workers in the social care sector to be carried out up until the end of March 2023.

17. The Fund has been used to ensure that eligible social care workers receive their expected income when they are off work with coronavirus, or self-isolating in line with public health guidance. It is available to eligible social care workers whose terms and conditions are such that they only receive Statutory Sick Pay or another rate of sick pay which is a significant reduction in their income. The Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020<sup>9</sup> make provision for the establishment, maintenance and administration of the Fund.

18. Finance partners have been consulted, including local government finance representatives, who are content with this arrangement.

### **Consultation**

19. A formal public consultation exercise has not been undertaken in relation to this instrument. However, the Scottish Government has informally consulted with public bodies and other stakeholders on the expiry of these measures and the saving provision being made. Further detail of this is provided above.

### **Impact Assessments**

20. No impact assessments have been completed for this instrument as a range of Impact Assessments were undertaken for the First Scottish Act, Second Scottish Act and the Extension and Expiry Act<sup>10</sup>.

### **Financial Effects**

21. The financial effects are detailed in the Business and Regulatory Impact Assessment and the Financial Memorandum prepared for the Extension and Expiry Act<sup>11</sup>. In relation to the Social Care Support Fund, support has been given to the social care sector over the course of the coronavirus pandemic through a range of support funding, mainly through sustainability payments to providers for under occupancy, infection prevention and control measures and increased staffing costs. It is estimated that the annual cost of the Social Care Staff Support Fund is in the region of £9 million in each of the years 2020-21 and 2021-22, and costs of £4.5 million anticipated in 2022-23 up to the end date of 30 September 2022. No other significant financial effects are anticipated in relation to these Regulations.

Scottish Government  
Directorate for Constitution and Cabinet  
August 2022

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<sup>9</sup> [The Social Care Staff Support Fund \(Coronavirus\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>10</sup> All of these Impact Assessments are linked to from this webpage - [Coronavirus \(COVID-19\) legislation - gov.scot \(www.gov.scot\)](https://www.gov.scot)

<sup>11</sup> [Introduced | Scottish Parliament Website](https://www.parliament.scot)