

Coronavirus (Extension and Expiry) (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B¹ of the Parliament's Standing Orders, in relation to the Coronavirus (Extension and Expiry) (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill Provisions

3. The purpose of the Bill is to update the response to the emergency situation caused by the coronavirus (COVID-19) pandemic. The Bill amends the Coronavirus (Scotland) Act 2020 ("the first Scottish Act"), passed by the Scottish Parliament on 1 April 2020 and the Coronavirus (Scotland) (No.2) Act ("the second Scottish Act") passed by the Scottish Parliament on 20 May 2020 ("the Scottish Acts").

4. The Bill makes provision to amend the Scottish Acts so that the main provisions of those Acts expire at the end of 31 March 2022 and, further, to allow the Scottish Ministers to make regulations amending the expiry date to 30 September 2022. A statement of reasons as to why the regulations

¹ [Chapter 9 Public Bill Procedures | Scottish Parliament Website](#)

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should be made must be laid before Parliament when the draft regulations seeking extension are laid. The Bill expires certain provisions in the Scottish Acts at the end of 30 September 2021. The Bill also provides for the making of consequential, transitional, transitory or saving provision in connection with the expiry under section 2 of any provision of the Scottish Acts.

Rationale for Subordinate Legislation

5. The Bill contains three delegated powers which are explained in more detail below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

6. The Scottish Government has had regard, when deciding what subordinate legislation powers and respective Parliamentary procedures are appropriate for the Bill and whether provisions should be in primary or in subordinate legislation, to:

7. the need to strike a balance between the importance of the issue and providing flexibility to respond to changing circumstances;

8. the need to make proper use of valuable Parliamentary time; and

9. the need to deal with the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

Delegated Powers

Section 1(3) – Power to amend the expiry date for Part 1 of the first Scottish Act

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

10. Section 12 of the first Scottish Act was most recently amended by Regulation 2 of the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021 (SSI 2021/152²) so that Part 1 of the first Scottish Act expires on 30 September 2021. The Bill amends section 12 further to provide that Part 1 of the first Scottish Act now expires at the end of 31 March 2022. Subsections (3) and (4) of section 12 are replaced with a new power which allows the Scottish Ministers to make regulations amending the expiry date to the end of 30 September 2022.

Reason for Taking Power

11. The coronavirus pandemic continues to impose a severe and sustained threat to human life in Scotland. The Scottish Government remains committed to taking all steps necessary to address that threat. The first Scottish Act contains provisions which make temporary adjustments to respond to the pandemic, and protect the health of people living in Scotland. It is the Scottish Government's view that some of these temporary provisions will still be required beyond 30 September 2021 as part of the Scottish Government's strategic aim to suppress the virus to the lowest possible level and keep it there, while striving to return to a more normal life for as many people as possible. However, it remains an appropriate safeguard that Part 1 of the first Scottish Act continues to be

² [SSI 2021/152](#)

subject to an overall sunset clause which means these provisions expire automatically at the end of 31 March 2022. It also continues to be appropriate to have the opportunity to extend Part 1 of the first Scottish Act by one further period of six months with the approval of the Scottish Parliament given the uncertainty as to how the pandemic will develop. At the same time as laying a draft of the regulations seeking an extension to the end of 31 March 2022, the Scottish Ministers must lay before the Scottish Parliament a statement of their reasons why the regulations should be made. The timing of the laying of the statement of reasons has changed slightly from laying before the draft of the regulations to laying at the same time. There are administrative benefits to laying at the same time which is the reason for the timing change.

Choice of Procedure

12. The affirmative procedure continues to be considered appropriate given that the regulations would amend primary legislation and have the effect of further extending Part 1 of the first Scottish Act.

Section 1(6) – Power to amend the expiry date for Part 1 of the second Scottish Act

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

13. Section 9 of the second Scottish Act was most recently amended by Regulation 3 of the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021 (SSI 2021/152³) so that Part 1 of the second Scottish Act expires on 30 September 2021. The Bill amends section 9 further to provide that Part 1 of the second Scottish Act now expires at the

³ [SSI 2021/152](#)

end of 31 March 2022. Subsections (3) and (4) of section 9 are replaced with a new power which allows the Scottish Ministers to make regulations amending the expiry date to the end of 30 September 2022.

Reason for Taking Power

14. The coronavirus pandemic continues to impose a severe and sustained threat to human life in Scotland. The Scottish Government remains committed to taking all steps necessary to address that threat. The second Scottish Act contains provisions which make temporary adjustments to respond to the pandemic, and protect the health of people living in Scotland. It is the Scottish Government's view that some of these temporary provisions will still be required beyond 30 September 2021 as part of the Scottish Government's strategic aim to suppress the virus to the lowest possible level and keep it there, while striving to return to a more normal life for as many people as possible. However, it remains an appropriate safeguard that Part 1 of the second Scottish Act continues to be subject to an overall sunset clause which means these provisions expire automatically at the end of 31 March 2022. It also continues to be appropriate to have the opportunity to extend this expiry date by one further period of six months with the approval of the Scottish Parliament given the uncertainty as to how the pandemic will develop. At the same time as laying a draft of the regulations seeking an extension to the end of 31 March 2022, the Scottish Ministers must lay before the Scottish Parliament a statement of their reasons why the regulations should be made. The timing of the laying of the statement of reasons has changed slightly from laying before the draft of the regulations to laying at the same time. There are administrative benefits to laying at the same time which is the reason for the timing change.

Choice of Procedure

15. The affirmative procedure continues to be considered appropriate given that the regulations would amend primary legislation and have the effect of further extending Part 1 of the second Scottish Act.

Section 5(1) – Power to make provision in connection with expiry

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative if amending primary legislation, otherwise negative

Provision

16. Section 5(1) provides that the Scottish Ministers may by regulations make consequential, transitional, transitory or saving provision in connection with the expiry under section 2 of any provision of the first Scottish Act or the second Scottish Act.

Reason for Taking Power

17. Section 2 of the Bill expires a number of provisions from the Scottish Acts that are no longer considered necessary. The Bill also contains a schedule with transitional and saving provision related to certain of the expiring provisions to ensure that appropriate arrangements are in place for an orderly transition when these emergency provisions expire. Section 12 of the first Scottish Act and section 9 of the second Scottish Act make provision for the expiry of Part 1 of each of those Acts and include powers to make consequential, transitional, transitory or saving provision in connected with expiry under those sections (see section 12(9) and (10) of the first Scottish Act and section 9(9) to (11) of the second Scottish Act). It is considered appropriate to take a similar power in relation to the provisions of the Acts that are being expired on the face of the Bill in the event that the requirement for further consequential, transitional, transitory or saving provision is identified.

Choice of procedure

18. The affirmative procedure is considered appropriate where regulations made under this power amend primary legislation. In all other cases, the negative procedure is considered appropriate to allow for flexibility while providing for scrutiny by the Scottish Parliament.

19. There are no other delegated powers in the Bill. However, there are also delegated powers in the Scottish Acts which will be extended by virtue of the change of expiry date for Part 1 of each Act. For completeness, the Delegated Powers Memorandums for the first Scottish Act⁴ and the second Scottish Act⁵ are available to view.

⁴ [Delegated Powers Memorandum - 1st Scottish Act](#)

⁵ [Delegated Powers Memorandum - 2nd Scottish Act](#)

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