

Coronavirus (Extension And Expiry) (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Coronavirus (Extension and Expiry) (Scotland) Bill, introduced in the Scottish Parliament on 18 June 2021.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 1–FM);
 - a Policy Memorandum (SP Bill 1–PM);
 - a Delegated Powers Memorandum (SP Bill 1–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 1–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

The Bill

5. The purpose of this Bill is to amend the expiry of certain provisions of the Coronavirus (Scotland) Act 2020 and Coronavirus (No.2) (Scotland) Act

This document relates to the Coronavirus (Extension and Expiry) (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 18 June 2021

2020 (“the Scottish Acts”) which were passed by the Scottish Parliament on 1 April and 20 May 2020 respectively in response to the emergency situation caused by the coronavirus (COVID-19) pandemic.

6. While the programme for vaccination of the adult population in Scotland against COVID-19 continues and infection rates remain under close observation, the Scottish Government considers it appropriate that certain provisions of the Scottish Acts may be expired at the end of 30 September 2021 but that it is also necessary to extend the operation of certain other provisions beyond their current stipulated date of expiry. This Bill provides for this and for appropriate transitional and saving provisions in relation to the provisions that are to expire at the end of 30 September 2021.

Section 1: Extension of provisions

7. Section 1(2) and (3) of the Bill amend section 12 of the Coronavirus (Scotland) Act 2020.

8. Subsection (2) changes the date set out in section 12(1) of the Coronavirus (Scotland) Act 2020 (relating to the expiry of the provisions in Part 1 of that Act) from 30 September 2021 to the end of 31 March 2022. Subsection (3) removes sections 12(3) and (4) of that Act and inserts a new subsection (3) which confers on the Scottish Ministers a power to amend by regulations section 12(1) of that Act to further extend the date on which the provisions in Part 1 of that Act expire from the end of the newly inserted 31 March 2022 to the end of 30 September 2022.

9. Subsections (5) and (6) of section 1 of the Bill amend section 9 of the Coronavirus (Scotland) (No.2) Act 2020.

10. Subsection (5) changes the date set out in section 9(1) of the Coronavirus (Scotland) (No.2) Act 2020 (relating to the expiry of the provisions in Part 1 of that Act) from 30 September 2021 to the end of 31 March 2022.

11. Subsection (6) removes section 9(3) and (4) of that Act and inserts a new subsection (3) which confers on the Scottish Ministers a power to amend by regulations section 9(1) of that Act to further extend the date on which the provisions in Part 1 of that Act expire from the end of the newly inserted 31 March 2022 to the end of 30 September 2022.

Section 2: Expiry of provisions

Coronavirus (Scotland) Act 2020 provisions

12. Section 2(1) of the Bill provides that certain provisions of the Coronavirus (Scotland) Act 2020 - set out in section 2(2) to (6) of the Bill - expire at the end of 30 September 2021. Those provisions are as follows –

13. Paragraphs 2 and 3 of schedule 2 (moratorium on diligence: multiple applications) remove the prohibition against benefitting from more than one moratorium on diligence in any 12 month period.

14. Paragraph 2 of schedule 3 (Children: child protection) removes the requirement for a second working day hearing to be held following the issuing of a Child Protection Order, and amends the timescales to apply to the sheriff to vary or terminate the order to reflect that there was no second working day hearing.

15. The provisions in paragraphs 1, 3 to 5 and 7 to 9 of schedule 3 (Children: Children’s hearings) relax existing requirements for the composition of children’s hearings, and the administration and conduct of children’s hearings, and there are extensions to the timescales for when certain legal orders must be reviewed and appeals against legal orders lodged.

16. Paragraph 10 of schedule 3 (Children: Looked after children) extends the timescales for review of children’s cases when they are placed in kinship care and enable local authorities to use foster carers more flexibly to look after additional children when necessary.

17. Paragraph 11 of schedule 3 (Vulnerable adults: cases of adults with incapacity) effectively ‘stops the clock’ on the duration of guardianship orders and certificates authorising medical treatment for the period the emergency legislation is in force. It has been suspended since 30 September 2020.

18. Paragraph 12(1), (2) and (7) of schedule 4 relate to a one-off extension of the time to complete unpaid work or other activity requirements by 12 months, for Community Payback Orders imposed on or before the date the Coronavirus (Scotland) Act 2020 came into force.

19. The provisions in paragraphs 12(3), (4), (5), (6) and (7) of schedule 4 enable the Scottish Ministers to make regulations which extend the period allowed to complete the unpaid work or other activity requirements of a Community Payback Order. Ministers may do so only if it is required due to a likely failure to comply with the requirements due to COVID-19, or in response to the effects of COVID-19 on local authorities or the courts.

20. Paragraph 14 of schedule 4 allows for the postponement of Community Payback Orders.

21. The provisions in paragraph 15 of schedule 4 allow for regulations to be made to vary or revoke requirements imposed in Community Payback Orders or Drug Treatment and Testing Orders. Section 2(4) of the Bill expires paragraph 15 in relation to drug treatment and testing orders so that the regulation making power can no longer be used to vary or revoke requirements imposed in those orders.

22. Paragraph 6 of schedule 6 (freedom of information: Commissioner's ability to take account of impact of coronavirus) enables the Scottish Information Commissioner to decide that, notwithstanding a public authority's failure to comply with timescales for responding to requests and requirements for review under the Freedom of Information (Scotland) Act 2002 (FOISA), the authority has complied with Part 1 of FOISA if certain conditions are met.

23. Paragraph 15 of schedule 6 (duties under the Public Finance and Accountability (Scotland) Act 2000) allows for amendment of the statutory deadlines for annual accounts as set by the Public Finance and Accountability Act 2000. The deadlines for such accounts were the 31 December 2020 and 31 December 2021 respectively.

24. Paragraphs 1 and 5 of schedule 7 (social security: period for re-determination of entitlement) relax the timescales which apply for Social Security Scotland making re-determinations.

25. Paragraphs 6 and 7 of schedule 7 (irritancy clauses in commercial leases: non-payment of rent or other sums due) modifies the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 so that the period of notice required to evict a tenant holding a commercial lease was extended from 14 days to 14 weeks for a monetary breach (non-payment of rent).

Coronavirus (Scotland) (No.2) Act 2020

26. Subsection (7) of section 2 of the Bill provides that certain provisions of the Coronavirus (Scotland) (No.2) Act 2020 set out in that subsection expire at the end of 30 September 2021. Those provisions are as follows –

27. Paragraph 3 of schedule 1 (termination of student residential tenancy by tenant: requirements for notice) makes provision in relation to tenancies for students in halls of residence and Purpose Built Student Accommodation (PBSA). The provisions in paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020 create a 7-day notice period where a student can terminate their lease. The 7-day notice period applies to student residential tenancies entered into prior to 27 May 2020 where the accommodation was occupied prior to that date.

28. Paragraph 6 of schedule 1 (carer's allowance supplement) modified the effect of Section 81 of the Social Security (Scotland) Act 2018. This has had the effect of adding an additional £230.10 to awards of Carer's Allowance Supplement for the period from 1 April 2020 to 30 September 2020. This addition is known as the Coronavirus Carer's Allowance Supplement. Further legislation will be introduced to allow for provision to be made for a subsequent increase to carer's allowance supplement for the period of 1 October 2021 to 31 March 2022.

29. Section 53 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") provides that Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate) may inspect registered care services, and sets out the purpose of inspections. Paragraph 22 of schedule 1 (care homes: inspections and reporting on coronavirus deaths) adds section 53A to the 2010 Act, requiring that the Care Inspectorate must lay a report before Parliament every two weeks during the emergency period. The reports must set out which care home services it has inspected in the two week period as well as the findings of those inspections. Paragraph 23 of schedule 1 inserts section 79A into the 2010 Act which introduces new duties about the reporting of deaths in care homes services from or attributable to coronavirus. Section 79A(1) of the 2010 Act requires that care home service providers must provide certain information to the Care Inspectorate each day in relation to the numbers of deaths which have occurred in a care home service, whether caused by or attributable to coronavirus or not.

30. Paragraph 24 of schedule 1 (marriages and civil partnerships during emergency period) requires the Scottish Ministers, in conjunction with the Registrar General of Births, Deaths and Marriages for Scotland, to take such steps as they consider necessary to ensure that the solemnisation of marriages and registration of civil partnerships continue to be available in Scotland whilst it is in force. It specifies that the steps taken must ensure that a person's right to marry, which is protected by Article 12 of the European Convention on Human Rights ("ECHR"), is not disproportionately interfered with for reasons relating to coronavirus. It also requires the Scottish Ministers to report on the steps taken and on the number of marriages and civil partnerships that have taken place. It was suspended by regulation 4 of the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provisions) Regulations 2021 (S.S.I. 2021/93) on 29 March 2021.

Availability of powers to bring forward expiry

31. Section 2(8) and (9) allows Scottish Ministers to use the powers in section 13(1) of the Coronavirus (Scotland) Act 2020 and section 10(1) of the Coronavirus (Scotland) (No.2) Act 2020 respectively to bring forward the expiry of any of the provisions to be expired by sections 2(2) to (7) of the Bill.

Section 3: Minor and consequential provisions

32. Section 3(1) and (3) of the Bill makes amendments to section 4 and schedule 4 of the Coronavirus (Scotland) Act 2020 as at the end of 30 September 2021. Section 3(5) makes an amendment to schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020. These amendments are made in consequence of the provisions in section 2 of the Bill.

33. Section 3 also revokes—

- the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 (S.S.I. 2020/299) (which provided for the extension of the main provisions of the Scottish Acts until 31 March 2021),
- the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021 (S.S.I. 2021/152) (which provides for the current extension of the main provisions of the Scottish Acts until 30 September 2021),

- the Coronavirus (Scotland) Act 2020 (Suspension: Adults with Incapacity) Regulations 2020 (S.S.I. 2020/267) (these regulations suspended the operation of paragraph 11(2) and (3) of schedule 3 of the Coronavirus (Scotland) Act 2020, which is expired by section 2(3) of the Bill), and
- regulation 4 of the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provisions) Regulations 2021 (S.S.I. 2021/93) (regulation 4 suspended the operation of paragraph 24 (marriage and civil partnership) of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020, which is expired by section 2(7)(d) of the Bill).

34. Section 3(2) and (4) of the Bill amends the requirement for the Scottish Ministers to lay a statement of reasons as to why the expiry of the main provisions of the Scottish Acts should be extended (set out in section 12(6) of the Coronavirus (Scotland) Act 2020 and section 9(6) of the Coronavirus (Scotland) (No.2) Act 2020) so that the statement must be laid at the same time as laying a draft Scottish statutory instrument containing draft regulations .

35. Section 3(6) of the Bill repeals two spent provisions in the Coronavirus (Scotland) (No.2) Act 2020, which contained amendments to the freedom of information provisions in the Coronavirus (Scotland) Act 2020. Schedule 4, Part 8, Paragraph 10 amended paragraph 6 of Part 2 of schedule 6 to the Coronavirus (Scotland) Act 2020, which confers discretion on the Scottish Information Commissioner to take into account the coronavirus outbreak when deciding if authorities have failed to comply with FOI timescales, and Schedule 4, Part 8, Paragraph 11 repealed paragraphs 3 to 5 of Part 2 of schedule 6 to the Coronavirus (Scotland) Act 2020, which extended the timescales for response, and gave the Scottish Ministers powers to further extend by direction. These amendments came into effect when the Coronavirus (Scotland) (No.2) Act 2020 received Royal Assent, so the provisions have accomplished their purposes.

Section 4: Transitional and saving provision

36. Section 4 of the Bill introduces the schedule which sets out specific transitional and saving provisions which are to apply to certain provisions of the Scottish Acts that are expired by section 2 of the Bill.

Section 5: Power to make provision in connection with expiry

37. Section 5 of the Bill allows the Scottish Ministers, by regulations, to make consequential, transitional, transitory or saving provision in connection with the expiry under section 2 of any provision of the Scottish Acts. This will allow, for instance, the status in law of anything done under the provisions of the Acts while they are in effect to be clarified if necessary for the period after the Acts expire.

Section 6: Commencement

38. Section 6(2) of the Bill sets out that most of the provisions of the Act that results from this Bill will come into force on the day after Royal Assent. Section 6(1) of the Bill provides some exceptions to this and section 3(1), (3), (5), (8) and (9) of the Bill will come into force at the end of 30 September 2021 - this is because these provisions only need to take effect when the relevant provisions of the Scottish Acts are expired at the end of 30 September 2021.

Schedule: Transitional and saving provisions

39. Paragraph 1(1) of the schedule of the Bill provides that notwithstanding sections 2(3) and 3(1) of the Bill, which expire schedule 3 of the Coronavirus (Scotland) Act 2020 at the end of 30 September 2021, the provisions set out in paragraph 1(2) to (6) of the schedule of the Bill continue to have effect in relation to the circumstances specified.

40. Paragraph 1(2) of the schedule of the Bill provides that, in relation to child protection orders made by the end of 30 September 2021, paragraph 2(1) to (6) of schedule 3 of the Coronavirus (Scotland) Act 2020 continues in effect so that—

- there is no requirement for a children's hearing to review the child protection order on the second working day after the day on which the order is made, and
- the timescales to apply to the sheriff to vary or terminate the order to reflect that there is no second working day hearing.

41. Paragraph 1(3) of the schedule of the Bill provides that paragraph 3 (maximum period for which compulsory supervision order has effect) of schedule 3 of the Coronavirus (Scotland) Act 2020 continues in effect in relation to certain compulsory supervision orders so that an order which

has, as at the date of expiry of paragraph 3 of schedule 3 of the Coronavirus (Scotland) Act 2020, already passed its original expiry date, without a children's hearing making a decision to continue, vary or terminate the order under section 138(3) of the 2011 Act, will not lapse. Such compulsory supervision orders will continue to have effect for up to an additional 6 months beyond their original expiry date, in accordance with section 83(7)(c) of the Children's Hearings (Scotland) Act 2011 (as inserted by schedule 3 of the 2020 Act) to allow time for a children's hearing to make a decision to continue, vary or terminate the order.

42. Paragraph 1(4) of the Bill continues and adjusts the effect of paragraph 4 of schedule 3 of the Coronavirus (Scotland) Act 2020 for interim compulsory supervision orders and interim variation of compulsory supervision orders made before the end of 30 September 2021 so that the maximum period for which those orders have effect is—

- where the order is made by a children's hearing, the period of 44 days, or
- where the order is made by a sheriff, the period the sheriff specifies or, if earlier, 12 November 2021.

43. Paragraph 1(5) of the schedule of the Bill provides that certain subparagraphs of paragraph 7 of schedule 3 of the Coronavirus (Scotland) Act 2020 continue in effect in relation to—

- decisions or determinations made before the end of 30 September 2021 that are being appealed against, so that appellants continue to have extended times in which to lodge an appeal and so that it is clear which timescale applies to disposal of those appeals.

44. Paragraph 1(6) to (8) of the schedule makes transitional provision relating to children who are in a placement of 4 or more children (who are not all siblings) before expiry of the schedule 3 of the Coronavirus (Scotland) Act 2020. This is needed because regulation 27A(1) of the Looked After Children (Scotland) Regulations 2009 provides that a local authority must not place a child with a foster carer where the placement would result in more than 3 children being placed with that foster carer at any one time ("the placement limit"). Regulation 27A(2) of the 2009 regulations provides certain exemptions to the placement limit. The placement limit in regulation 27A was temporarily disapplied by schedule 3, but will reapply at the end of 30 September 2021 (when section 2(3) of the

Bill expires schedule 3), and this means that children who are currently with a foster carer, in breach of the placement limit, would have to be moved, even if this is not in their best interests. Therefore, paragraph 1(6) to (8) provide that if a child is currently in such a placement, and is not the subject of an emergency or short-term placement, then regulation 27B(2) to (7) of the Looked After Children (Scotland) Regulations 2009 apply as if the child had been placed with the foster carer on 30 September 2021. This means that the local authority must refer the child's case to the fostering panel within 4 weeks of 30 September 2021 (or as soon as practicable thereafter). After receiving and taking into account a recommendation from the fostering panel, the local authority has a period of 14 days to decide whether the foster carer is suitable to be a carer for the child. If this is answered in the affirmative, the exemption to the placement limit in regulation 27A(2)(c) of the 2009 Regulations applies, allowing the child to remain with that foster carer. This also ensures that if, in placing a child during the Coronavirus emergency, the local authority relied on the disapplication of the placement limit, the child's case will be reviewed by the local authority and the fostering panel within an appropriate timescale.

45. Paragraph 2 of the schedule provides that notwithstanding section 2(5)(a) of the Bill, paragraph 6 of schedule 6 of the Coronavirus (Scotland) Act 2020 continues in effect in relation to a request for information made under section 1(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) before the end of 30 September 2021. This means that the Scottish Information Commissioner may continue to take the effects of coronavirus into account in deciding an application made under section (47(1) of FOISA in respect of a request for information, where that request was made before the end of 30 September 2021.

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