

# **CORONAVIRUS (SCOTLAND) ACT 2020**

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## **EXPLANATORY NOTES**

### **DETAIL ABOUT PROVISIONS**

#### ***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.

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

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.