

CORONAVIRUS (SCOTLAND) (NO.2) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Meaning of “coronavirus”

8. Section 1 contains the definition of “coronavirus”. This is the same definition as used for the UK Act and the 2020 Act.

Advancement of equality and non-discrimination

9. Section 6 provides that the Scottish Ministers must have regard to the importance of communicating in an inclusive way and to opportunities to advance equality and non-discrimination when exercising the functions contained in Part 1 of the Act. Subsections (3) to (6) amend section 9 of the Coronavirus (Scotland) Act 2020 to add references to the importance of communicating in an inclusive way to the equivalent duty in that section, so that section 9 of that Act is in the same terms as section 6 of this Act.

Subordinate legislation making powers

10. Section 7 provides that powers to make subordinate legislation conferred by Part 1 of the Act (which includes schedules 1 to 4) include the power to make ancillary provision.

Suspension, revival and expiry of the provisions of the Act

11. Section 8 provides the Scottish Ministers with a power, by regulations, to suspend the effect of any provision in Part 1 of the Act, and also to revive the effect of any suspended provision. This power allows a provision which is no longer, in the view of the Scottish Ministers, appropriate or proportionate, but which may become necessary to use again, to be temporarily suspended.
12. Section 9 provides for Part 1 of the Act to expire on 30 September 2020, unless the Scottish Parliament approves regulations providing for its effect to continue until 31 March 2021. If the Scottish Parliament does approve such regulations, it may then approve regulations allowing one further, final extension until 30 September 2021, at which point any remaining provisions in the Act will expire. These are the same dates as set out in section 12 of the 2020 Act, meaning that the provisions of the Act will be able to expire to the same timetable as the provisions of the 2020 Act.
13. Subsection (9) of section 9 allows the Scottish Ministers, by regulations, to make transitional, transitory, saving or consequential provision in connection with the expiry of provisions of the Act. This will allow, for instance, the status in law of anything done under the provisions of the Act while it is in effect to be clarified if necessary for the period after the Act expires.
14. Section 10 allows the Scottish Ministers, by regulations, to cause any provision in Part 1 of the Act to expire earlier than set out above, where they are satisfied that the provisions are no longer appropriate or proportionate.

Reporting requirements

15. Section 12 requires the Scottish Ministers to keep the necessity of the provisions in Part 1 of the Act under review, and to report every two months on its assessment of that necessity, on the status of the provisions of the Act, and on the use of the powers in the Act.
16. The dates set out mean that the first reporting period for the provisions of the Act will be the same as the second reporting period for the provisions of the 2020 Act – 31 July 2020. This means that the reporting timetables for the 2020 Act and the Act can be operated together, and at the same time.
17. Section 13 requires the Scottish Ministers, when undertaking reviews and reporting on each review under the Act, to take into account, where relevant, available information from the Scottish Police Authority or Police Scotland about the nature and number of incidents of domestic abuse during each reporting period. The information to be taken into account is information received by the Scottish Ministers from the Scottish Police Authority or Police Scotland or information placed in the public domain by the Scottish Police Authority or Police Scotland.
18. Subsections (2) and (3) of section 13 amend the 2020 Act to make corresponding provision for the Scottish Ministers to take account of available information from the Scottish Police Authority or Police Scotland about the nature and number of incidents of domestic abuse during each reporting period.
19. Section 14 requires the Scottish Ministers to undertake a review of SSIs which have been made by the Scottish Ministers where the main purpose is to make provision for a reason relating to coronavirus, and to report on this review to Parliament.
20. Subsection (6) exempts SSIs made under this Act, the 2020 Act and the UK Act from this reporting requirement, on the basis that for each of those Acts they are already being reported on.
21. The reporting obligation covers both factual matters (such as parliamentary procedure used; the details of the powers used to make the SSIs; period of effect) as well as requiring a statement from Ministers that they are ‘satisfied’ with the status of individual SSIs.

Ancillary provision

22. Section 13 gives Scottish Minister the power, by regulations, to make ancillary provision for the purposes of, or in connection with, giving full effect to the Act.

Commencement

23. Section 14 sets out that the Act will come into force on the day after Royal Assent.

Schedule 1: Protection of the individual

Student residential tenancy: termination by tenant

24. Paragraph 1 of schedule 1 defines a student residential tenancy as one which meets the conditions in paragraph 5(1) of schedule 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
25. Paragraph 2 enables a person with a student residential tenancy to terminate the accommodation agreement with their landlord where certain requirements are met.
26. Paragraph 3 sets out the requirements that a notice to terminate a student residential tenancy must meet and the minimum notice periods that apply. These provisions mean that for a notice to be valid it must be in writing (this includes electronic communications) and it must state the day on which the tenancy is to end, which must

be a day that is after the last day of the minimum notice period. The minimum notice periods that apply are 7 days (where the tenancy was entered into before the coming into force of this provision and the let property was occupied by the tenant at any time before the coming into force of this paragraph) and 28 days (in any other case).

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears

27. Paragraph 4 gives Scottish Ministers a regulation making power (affirmative) to introduce private landlord pre-action requirements that should be complied with when seeking to end an assured or short assured tenancy due to rent arrears where all, or part of the arrears, are a result of the impact of the Covid-19 pandemic and ensures that the First-tier Tribunal for Scotland (Housing and Property Chamber) take account of the extent to which a landlord has complied with the pre-action requirements provided for by regulations in deciding whether it is reasonable to grant an eviction order in relation to assured and short assured tenancies.
28. Paragraph 5 gives Scottish Ministers a regulation making power (affirmative) to introduce private landlord pre-action requirements that should be complied with when seeking to end a private residential tenancy due to rent arrears where all, or part of the arrears, are a result of the impact of the Covid-19 pandemic and ensures that the First-tier Tribunal for Scotland (Housing and Property Chamber) take account of the extent to which a landlord has complied with the pre-action requirements provided for by regulation in deciding whether it is reasonable to grant an eviction order in relation to a private residential tenancy.

Carer's allowance supplement

29. Paragraph 4 amends section 81 of the Social Security (Scotland) Act 2018. This has 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.

Social care staff support fund

30. Paragraph 7 makes provision to require the Scottish Ministers to establish a social care staff support fund as soon as is possible when the Act comes into force. Paragraph 7(2) sets out what the fund is to be used for. The Scottish Ministers must use the fund to provide financial assistance to workers in the social care sector who have a restricted ability to work due to coronavirus and, as a result of that, have a reduced income and consequently are experiencing, or would experience, financial hardship.
31. Paragraphs 7(3) to (7) require the Scottish Ministers to make further provision by regulations about the establishment, maintenance and administration of the fund. Those regulations are subject to made affirmative procedure. This means the regulations will come into force when they are made (ie signed) and will cease to have effect 28 days after being made, if the Scottish Parliament does not approve them within that period.

Bankruptcy

32. Paragraph 8 makes temporary modifications to section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act") as that section applies to documents which are authorised or required to be sent by or under the Bankruptcy (Scotland) Act 2016 ("the 2016 Act").
33. Paragraph 8(2)(a) substitutes a new section 26(2)(c) of the 2010 Act with effect that a document may be transmitted to a person electronically.
34. Paragraph 8(2)(b) repeals existing section 26(3) of the 2010 Act which requires both the sender and the recipient of a document to agree in writing that the document may be transmitted electronically.

35. Instead, paragraph 8(2)(c) substitutes a new section 26(6) of the 2010 Act. New subsection (6)(a) provides that electronic transmission of a document must be effected in a manner that the recipient has indicated to the sender that they are willing to receive the document electronically. Subsection (6)(b) makes provision as to the circumstances in which willingness to receive a document electronically may be given or inferred. Subsection (6)(c) provides that uploading a document to an electronic storage system from where it may be downloaded by the recipient may constitute electronic transmission.
36. Paragraph 9 makes provision in relation to the criteria for determining whether a debtor who applies for sequestration under section 2 of the 2016 Act is eligible for the form of sequestration known as the minimal asset process (“MAP”).
37. Paragraph 9(2)(a) raises the threshold specified in section 2(2)(b)(ii) of the 2016 Act from £17,000 to £25,000. Debtors whose total debts fall within the upper and lower monetary thresholds specified in section 2(2)(b) of the 2016 Act are eligible for MAP.
38. Paragraph 9(2)(b) inserts a new subsection (2A) into section 2 of the 2016 Act. New subsection (2A) provides for debt arising from student loans to be disregarded for the purposes of determining whether the total of an individual’s debts falls within the monetary thresholds specified in section 2(2)(b) of the 2016 Act.
39. Paragraph 10 temporarily modifies the definitions of “qualified creditor” and “qualified creditors” in section 7(1) of the 2016 Act by raising the amount of money a creditor or a group of creditors must be owed in order to be “qualified” from £3,000 to £10,000. A qualified creditor has the right to petition the court for a debtor’s bankruptcy in terms of section 2(1)(b)(i) of the 2016 Act, where the debtor is apparently insolvent.
40. Paragraph 11 temporarily extends the period within which a trustee in sequestration must submit initial proposals for a debtor contribution order to the Accountant in Bankruptcy under section 90(2) of the 2016 Act from 6 weeks to 12 weeks. Paragraph 11(3) provides that the modification applies only where the date of the award of sequestration falls on or after the date on which paragraph 11 comes into force.
41. Paragraph 12 temporarily modifies paragraph 13 of schedule 6 of the 2016 Act to allow meetings of creditors to take place using electronic means. Paragraph 12(2)(b) makes consequential amendments.
42. Paragraph 13 modifies regulation 3 of the Bankruptcy (Scotland) Regulations 2016 ([S.S.I. 2016/397](#)) to allow the forms set out in schedule 1 of those Regulations to be signed with an electronic signature.
43. Paragraph 14 makes provision in relation to the fees which are payable where a debtor applies for sequestration under section 2(1)(a) of the 2016 Act.
44. Paragraph 14(2) inserts a temporary regulation 7A into the Bankruptcy Fees (Scotland) Regulations 2018 ([S.S.I. 2018/127](#)) (“the 2018 Regulations”). New regulation 7A creates an exemption from the fee that would otherwise be payable under entry 22 of the table of fees in the schedule of the 2018 Regulations where an individual applies for sequestration. The exemption applies to individuals who are, or have been, in receipt of certain benefits.
45. Paragraph 14(3) reduces the fees specified in entry 22 of the table of fees in the schedule of the 2018 Regulations. The fee specified in entry 22(a) is payable by a MAP debtor to whom section 2(2) of the 2016 Act applies. The fee specified in entry 22(b) is payable by any other debtor. Paragraph 14(3) reduces these fees to £50 and £150 respectively.

Mental health: named person nomination

46. Section 250(2A) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) provides that the nomination of a named person is only valid if a docket

to the nomination states that the person nominated has consented to the nomination, the docket is signed by the nominated person, and the nominated person's signature is witnessed by a prescribed person.

47. Paragraph 15 amends Section 250(2A) of the 2003 Act so that the nominated person's signature will no longer require to be witnessed by a prescribed person.

Care Homes

48. Section 63 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") adds provisions on improvements notices for local authority services to cover cases where the local authority considers that a withdrawal of registration would place it in breach of a statutory duty.
49. Paragraphs 16 and 17 of schedule 1 add temporary modifications to Part 5 of the 2010 Act. These modifications will have effect for a limited period of time.
50. Paragraph 16 adds sections 63A and 63B to the 2010 Act.
51. Section 63A requires that where the Health Board considers that, for a reason relating to coronavirus, there is a material risk to the health of persons at the specified accommodation, the Health Board may issue a direction to the service provider to take specific steps. Subsection (3) requires that the steps must relate directly to reducing the risk to the health of persons at the care home. Subsection (7) requires the direction to be in writing.
52. Subsections (4) and (5) of section 63A provide that when making a direction, the health board must have regard to any guidance issued by Scottish Ministers which must be published by the Scottish Ministers in an appropriate manner.
53. Subsection (6) of section 63A gives the health board power to vary or revoke a direction.
54. Section 63B gives Health Boards the power to act where a section 63A direction has not been complied with. Subsection (2) of section 63B allows the Health Board to enter the care home, carry out the steps themselves and recover the costs incurred of doing so from the provider.
55. Subsections (3) and (4) of section 63B allow a Sheriff to grant a warrant to allow the Health Board to carry out these actions if entry to the care home is refused and if there are reasonable grounds for entering the care home. Subsection (5) provides that the warrant will expire either within 28 days of when it was granted or once the specified steps have been taken.
56. Subsection (6) of section 63B provides that a failure to comply with a warrant granted under section 63B is a relevant offence for the purposes of section 64 of the 2010 Act. This means that the Care Inspectorate¹ may cancel the registration of a provider if they fail to comply with a warrant.
57. Paragraph 17 inserts sections 65A and 65B into the 2010 Act.
58. Section 65A(1) provides that Scottish Ministers may apply to a Sheriff Court or Court of Session for an emergency intervention order in respect of a care home service provided at a care home which is stated in the application. Subsection (7) provides that the court must make an emergency intervention order if it appears there is, due to coronavirus, a serious risk to the life, health and wellbeing of people at the care home. Subsection (8) provides for any necessary incidental provisions to be included in the order (such as prohibiting the provider of a care home service from selling the care home, if the court considers such a provision should be contained in an order)

¹ The statutory name of the Care Inspectorate is Social Care and Social Work Improvement Scotland and in the 2010 Act it is referred to as SCSWIS.

59. Subsection (2) provides that, when granted by a court, an emergency intervention order authorises the Scottish Ministers to nominate an officer who can enter the care home, direct and control the provision of the care home service and do anything that the officer considers necessary to ensure the service is provided to an appropriate standard for an initial period of up to 12 months. The provider of the care home service is required to comply with any direction given by the nominated officer.
60. Subsection (3) provides the court may make an interim order on application.
61. Subsection (5) provides that Scottish Ministers can exercise these powers prior to making an application to the Sheriff Court or Court of Session where the Scottish Ministers are satisfied that intervening in a care home is essential to prevent imminent or serious risk to the life or health of any person in the care home. Subsection (6) provides that where this power has been exercised, the Scottish Ministers must make an application to the court within 24 hours.
62. Subsections (13) and (14) provide that the court may vary, extend or revoke an order on application of the Scottish Ministers or the affected providers. This also applies to interim orders. An emergency intervention order can be extended for a further period of up to 6 months. This means that the maximum amount of time that an emergency intervention order can be in place for is 18 months.
63. Where an application for an emergency intervention order (or an interim order) is granted or refused, the usual rights of appeal from decisions of a sheriff as set out in the Court Reform (Scotland) Act 2014. Similarly, where an application for an emergency intervention order (or an interim order) is determined by the Court of Session, the usual rights of appeal against decisions made by a court of session judge, as set out in the Court of Session Act 1988, will apply. Section 65B provides that Scottish Ministers may make further provisions to the emergency intervention orders in Section 65A by laying regulations before the Scottish Parliament. Those regulations are subject to the 'made affirmative' procedure. This means that the regulations will take effect when they are made (signed) and will cease to have effect if they are not approved by the Scottish Parliament within 28 days of day on which they were made.

Powers to purchase care home services and care at home providers

64. Paragraphs 18 to 20 provide a local authority and various health bodies with temporary powers to purchase a care home or a care at home service. Paragraph 18 provides that a local authority may purchase, by agreement, a care home service, a care at home service and any asset or liability of those services under the circumstances outlined in Paragraph 20. A local authority can exercise these powers without prejudice to its powers to purchase or acquire property or land contained at sections 69 and 70 of the Local Government (Scotland) Act 1973.
65. Paragraph 19 provides that a health body (a Health Board, the Common Services Agency and Health Improvement Scotland) may purchase, by agreement, a care home service and any asset or liability of that provider on behalf of Scottish Ministers under the circumstances in Paragraph 20. Paragraph 19 also provides that the health body must comply with a written direction by Scottish Ministers. Directions must be published and they can be varied or revoked by a subsequent direction.
66. Paragraph 20 describes the circumstances in which the local authority can purchase the provider of a care home or care at home services (or any asset or liability of that provider) and a health body can purchase the provider of a care at home service (or any asset or liability of that provider). These circumstances are where, for a reason related to coronavirus: the provider is in serious financial difficulty; the local authority or health body is satisfied there is a threat to the life, health or wellbeing of people receiving the service; or where a provider has recently stopped providing the services.

67. Paragraphs 20(3) and 20(4) set out that a provider is regarded as being in serious financial difficulty if it notifies the Care Inspectorate of an insolvency event. An insolvency event is defined with reference to regulation 6A, 6B or 6C of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011. After receiving notification of such an event, the Care Inspectorate must inform any local authority and health board in whose areas the services are being provided, the Common Services Agency and Healthcare Improvement Scotland.
68. Paragraph 20(5) provides that before being satisfied as to the threat to life, health or wellbeing, the purchaser must consult the Care Inspectorate, any other local authority or health board in whose area the services are being provided, the Common Services Agency, Healthcare Improvement Scotland and any other persons or bodies it considers appropriate.
69. Paragraph 21 contains definitions of terminology used in paragraphs 18 to 20.

Care homes: further provision

70. 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.
71. Paragraph 22 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 period for which paragraph 22 is in force). These reports must set out which care home services it has inspected in the two week period as well as the findings of those inspections.
72. Paragraph 23 inserts section 79B into the 2010 Act which introduces new duties about the reporting of deaths in care homes services from or attributable to coronavirus.
73. 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.
74. Section 79A(2) of the 2010 Act requires that the Care Inspectorate must prepare a report of the information provided by care home service providers as soon as practicable at the end of every seven day period during which the Care Inspectorate has been receiving such information. This report is to be shared with the Scottish Ministers.
75. Section 79(3) of the 2010 Act requires the Scottish Ministers to subsequently lay reports prepared by the Care Inspectorate under section 79A(2) before Parliament as soon as practicable after having received these from the Care Inspectorate and in any event no later than seven days after receipt.

Marriage and civil partnership

76. Paragraph 24 of schedule 1 requires the Scottish Ministers, in conjunction with the Registrar General of Births, Deaths and Marriages for Scotland, to take steps to ensure that the solemnisation of marriages and registration of civil partnerships continue to be available in Scotland whilst paragraph 24 is in force. It also requires the Scottish Ministers to report every two months on the steps taken and on the numbers of marriages and civil partnerships that have taken place.

Schedule 2: Operation of the justice system

Criminal proceedings: extension of time limits

77. Paragraph 1 of schedule 2 makes provision to extend certain statutory time limits contained in the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) relating to criminal proceedings.
78. Paragraph 1(2) amends section 145 of the 1995 Act which provides the court with a power to adjourn a summary case at first calling for inquiry into the case, or for any other cause it considers reasonable for such period as it considers appropriate. It removes subsection 145(3) which provides that, where the accused has been remanded on bail or ordained to appear, no single period of adjournment shall exceed 28 days. The effect of this is that the court can adjourn a hearing of such a case for such a period as the court considers appropriate, without this limitation.
79. Paragraph 1(3) amends section 145A of the 1995 Act, which provides the court with a power to adjourn a case at first calling in a summary case where the accused is not present, to allow the accused to appear in answer to the complaint, or time for inquiry into the case, or for any other cause the court considers reasonable. It removes section 145A(3) which provides that no single period of adjournment shall exceed 28 days. The effect of this is that the court can adjourn a hearing of such a case for such a period as the court considers appropriate, without this limitation.
80. Paragraph 1(4) amends section 200 of the 1995 Act, which provides the court with a power to adjourn a case where an accused person has been found to have committed an offence punishable by imprisonment to enable inquiry to be made into their physical or mental condition to assist in determining the most appropriate means of dealing with them.
81. Paragraph 1(4)(a) amends section 200(2) to remove the three week limit for which any single adjournment can be made. The effect of this is that the court can adjourn the case for such a period as the court thinks necessary to enable a medical examination and report to be made.
82. Paragraph 1(4)(b) amends section 200(3)(a) to remove the three week limit for which any single adjournment can be made in a case where the court is of the opinion, on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder and that the person ought to continue to be committed to hospital for the purpose of inquiry into their mental condition following the expiry of the period specified in an order for committal to hospital under section 200(2)(b). The effect of this is that the court can adjourn the case for such a further period as the court thinks necessary to enable a medical examination and report to be made.
83. Paragraph 1(5) amends section 245J of the 1995 Act, which provides the court with a power to adjourn a case where an offender appears to have failed to comply with a requirement of a community payback order, drug testing and treatment order or restriction of liberty order for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with them, by substituting a new subsection (3), which provides that the court may adjourn a hearing under section 245J(1) for such period as it considers appropriate. This temporarily replaces the existing power to adjourn a case for 4 weeks at a time, or 8 weeks on cause shown.

Arrangements for the custody of persons detained at police stations

84. Paragraph 2(1) allows the Scottish Ministers to make arrangements for the functions set out in sub-paragraph (2) to be performed by prisoner custody officers with escort functions.
85. The functions in sub-paragraph (2) are the transfer and custody of prisoners in police stations in connection with appearances before the court by electronic means, and

administrative functions connected with such appearances. Arrangements made under sub-paragraph (1) could therefore allow prisoner custody officers to be responsible for the custody of prisoners in police stations before, during or after their appearance before the court, so long as those functions are exercised in connection with the appearance of the prisoner before the court by electronic means. The arrangements could also allow prisoner custody officers to administer court papers and manage timetables for hearings.

86. Sub-paragraph (3) provides that the arrangements made by the Scottish Ministers may include entering into contracts with other persons for the provision of prisoner custody officers.
87. Paragraph 3 applies the relevant provisions of the Criminal Justice and Public Order Act 1994 and the Prisons and Young Offenders Institutions (Scotland) Rules 2011 ([S.S.I. 2011/331](#)), to the arrangements made under paragraph 2 as they apply to prisoner escort arrangements made under section 102(1) of the 1994 Act. It means, for example, that whenever a prisoner custody officer is responsible for the custody of a prisoner by virtue of arrangements made under paragraph 2, they have the powers and duties under section 104 of the 1994 Act in relation to that prisoner.
88. Paragraph 4 provides that a prisoner is not to be regarded as having been transferred out of police custody for the purposes of section 64(2)(cb) of the Criminal Justice (Scotland) Act 2016 where functions are performed in police stations by prisoner custody officers prior to the prisoner being brought before the court. The application of section 64 is otherwise unaffected, meaning that police custody ends when the prisoner appears before the court by electronic means.

Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016

89. Paragraph 6 makes provision which enables the court to prevent the expiry of an undertaking given under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) when certain conditions are met.
90. Paragraph 6(2) makes a consequential amendment to section 29(1)(a) of the 2016 Act by introducing reference to new section 29A.
91. Paragraph 6(3) inserts a new section 29A into the 2016 Act, which deals with expiry of undertakings. The new section 29A enables the court to modify the terms of an undertaking given under section 25(2)(a) of the 2016 Act by changing the time at which the person who gave the undertaking is to appear at court where certain conditions are met, as set out in subsection (1). Where the court exercises this power, this has the effect of the undertaking and any conditions attached to it continuing until the newly specified time at which the person is to appear at court.
92. Those conditions are:
- the person has failed to appear at court as required by the terms of the undertaking,
 - the court considers that the failure to appear is attributable to a reason related to coronavirus, and
 - the court does not consider it appropriate to grant a warrant for the person’s arrest on account of the failure to appear.
93. Subsection (2) requires the procurator fiscal to give notice, as soon as reasonably practicable, to the person who gave the undertaking that the terms of the undertaking have been modified, where the court makes such an order under subsection (1).
94. Subsection (3) prescribes the manner in which notice under subsection (2) must be effected and provides that the same requirements as in section 141 of the Criminal Procedure (Scotland) Act 1995 apply. This includes delivering the notice personally or leaving it at the person’s home.

95. Subsection (4) provides that the references in subsection (1) to the terms of the undertaking include those modified by the procurator fiscal under section 27(1).
96. Subsection (5) provides that a reference in any enactment to the modification of the terms of an undertaking made by the procurator fiscal under section 27(1) is to be treated as including modification by the court under subsection (1).
97. Fixed penalty notices under the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020
98. The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020²[1] (“the Health Protection Regulations”) create a number of criminal offences for the purpose of responding to the threat to public health posed by the incidence and spread of coronavirus in Scotland. Under Regulation 9 a police officer may issue a fixed penalty notice (“an FPN”) to a person where the officer reasonably believes that the person:
 - has committed an offence under the Regulations, and
 - is aged 16 years or over.
99. Paragraph 7 of schedule 2 amends regulation 9 of the Health Protection Regulations to change the age to 18.
100. As a consequence, a police officer will only be able to issue an FPN under those Regulations where the officer reasonably believes that the person is aged 18 or over.

Proceeds of crime: extension of permitted period for purpose of confiscation order

101. Paragraph 8 inserts a new subsection (4A) in section 99 (confiscation orders: postponement) of the Proceeds of Crime Act 2002 (“the 2002 Act”).
102. Subsection (4A) specifies that, for the purposes of section 99(4) of the 2002 Act, “exceptional circumstances” includes the effect (whether direct or indirect) of coronavirus on the proceedings.

Proceeds of crime: time limits for payment of confiscation orders

103. Paragraph 9 makes provision in relation to the time limits for payment of confiscation orders as set out in section 116 of the 2002 Act.
104. Paragraph 9(2)(c) inserts new subsections (5A) and (5B) into section 116. When an application is made under section 116(4) to extend the specified period within which the sums due under the confiscation order must be paid, that extended period must not exceed twelve months from the day on which the confiscation order was made. New subsections (5A) and (5B), provide that, where the accused is unable to pay for a reason relating to coronavirus, the court may order that the extended period continue until such day as the court considers appropriate in the circumstances (i.e. the effect is that the twelve month restriction in section 116(5)(b) is disapplied).
105. Paragraph 9(2)(d) and (e) modify the effect of section 116(6) so that, where new subsection (5A) applies, an order under section 116(4) may be made after the end of the period of twelve months starting with the day on which the confiscation order is made (i.e. the effect is that the twelve month restriction in section 116(6)(b) is disapplied).
106. Paragraph 9(3) inserts a new section 116A to provide further time for payment due to coronavirus. New section 116A applies where the court has made an order under section 116(4) extending the specified period. It allows the accused to apply to the sheriff court for an order further extending the specified period. Where the court is

2 <http://www.legislation.gov.uk/ssi/2020/103/regulation/9>

satisfied that the accused is unable to pay for a reason relating to coronavirus, it may make an order further extending the specified period for such period as the court considers appropriate in the circumstances.

107. Paragraph 9 also makes provision in relation to the payment of interest on unpaid sums under a confiscation order, as set out in section 117 of the 2002 Act. Subsection (1) provides that interest must be paid on amounts required to be paid under a confiscation order if those amounts are not paid when they are required to be paid. Subsection (3) sets out circumstances where no amount is required to be paid for the purposes of section 117 (and so interest does not accrue).
108. Paragraph 9(4)(c) inserts new subsections (3A) and (3B) into section 117 to set out further circumstances where no amount is required to be paid. New subsection (3A) modifies section 117(3)(c) so that the twelve month restriction is disapplied where a section 116(4) application has been made on the basis of the accused's inability to pay for a reason relating to coronavirus. Subsection (3B) provides that no amount is required to be paid for the purposes of section 117 where an application has been made under new section 116A(2) for a further extension before the expiry of the period specified under section 116(4), and that application has not been determined by the court.

Replacement of requirement for intimation on walls of court, etc.

109. Paragraph 10(2)(a) inserts a new paragraph 1A into Part 1 of schedule 4 of the 2020 Act. The effect of paragraph 1A(1) is that where there is provision requiring or permitting a document to be displayed on the walls (or any other part) of a court building, or to be made publicly available within a court, that is instead to be done by publication of the document on the Scottish Courts and Tribunals Service ("SCTS") website.
110. Paragraph 1A(2) confers a power on the Lord President or the Lord Justice General to direct that sub-paragraph (1) does not apply to a specified type of document.
111. Paragraph 1A(3)(a) provides that publication of a document on the SCTS website is to be done in accordance with any direction issued by the Lord President or the Lord Justice General. Paragraph 1A(4) makes it clear that any such direction may provide for a document to be made available in redacted form only.
112. Paragraph 1A(3)(b) ensures that any requirements pertaining to a document being displayed within a court building, such as specification of a time period for display, continue to apply to publication of the document on the SCTS website, subject to any necessary modifications.
113. Paragraph 1A(5) preserves the effect of provision for alternative method of publication, such as intimation by advertisement in a newspaper.
114. Paragraph 10(2)(b) modifies paragraph 5 of schedule 4 of the 2020 Act so as to require that any direction made under new paragraph 1A(2) or (3)(a) be made public.

Schedule 3: Reports, accounts and other documents

Reports, etc. under the Climate Change (Scotland) Act 2009

115. Paragraph 1 of schedule 3 amends the Climate Change (Scotland) Act 2009 ("the 2009 Act").
116. Paragraph 1(2) amends section 8A(1) of the 2009 Act (inserted by section 17 of the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019) in relation to the date by which Scottish Ministers are required to have created a nitrogen balance sheet. This date is changed from 18 months to 24 months after the coming into force of section 8A of the 2009 Act.

117. Paragraph 1(3) amends section 32A(10) of the 2009 Act (inserted by section 9 of the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019), in relation to the date by which a citizens assembly on climate change is required to have completed its deliberations and reported to the Scottish Parliament and the Scottish Ministers. It provides that if the citizens assembly is unable, for a reason relating to coronavirus, to complete these functions by 28 February 2021, then it must do so as soon as reasonably practicable after that date.

Accounts of registered social landlords

118. Paragraph 2 of schedule 3 amends section 70 of the Housing (Scotland) Act 2010.
119. Paragraph 2(2) disapplies the duty, in respect of the financial year ending with 31 March 2020, for Registered Social Landlords to submit audited annual accounts to the Scottish Housing Regulator within six months of the end of the period to which they relate. Instead, they must be provided within nine months of the end of the period to which they relate.

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

120. Paragraph 15(1) of schedule 6 of the 2020 Act 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.
121. Paragraph 3 amends the 2020 Act to allow amendments to be made to the Public Finance and Accountability (Scotland) Act 2000 in respect of the periods most likely to be affected by the coronavirus outbreak (i.e. financial years 2019/20 and 2020/2021), as part of the response to the accounting timetable disruption caused by the outbreak.

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

122. Paragraph 4 makes provision to amend section 33B(1) of the Housing (Scotland) Act 1987 (“the 1987 Act”) to extend, by six months, the deadline for the Scottish Ministers to publish a statement on the circumstances and criteria for exercising the power in section 33A of the 1987 Act, relating to referrals between local authorities on the grounds of local connection. It has the effect of extending the deadline for publishing the statement to 18 months from the coming into force of section 33B(1) (on 7 November 2019).
123. Paragraph 4(2)(b) inserts new subsections (1A) and (1B) into section 33B of the 1987 Act to give the Scottish Ministers the power to make regulations further extending the period in section 33B(1) by up to six months on a one-off basis, should this be necessary.

Schedule 4: Other measures in response to coronavirus

UEFA European Championship

124. Paragraph 1 of schedule 4 modifies the UEFA European Championship (Scotland) Act 2020 (“the 2020 Act”).
125. Paragraph 1(2) modifies section 1 (meaning of key terms) of the 2020 Act. The definition of “Championship” is amended so that it may take place in a year other than 2020. The definition of “Championship period” is amended so as to be a period of not more than 42 days, ending not later than 31 December 2022, as specified by the Scottish Ministers in regulations. The trading and advertising offences created by the 2020 Act can only be committed during the Championship period.
126. Paragraph 1(3) amends section 3 of the 2020 Act, which contains an exception to the touting offence in section 2(1) of the 2020 Act. Section 3(2)(b)(i) of the 2020 Act is amended so that instead of being limited to England, Wales, Northern Ireland, or of a

member State of the European Union, a charity based in any territory outwith Scotland may qualify for the exception, subject to meeting certain conditions.

127. Paragraph 1(3)(c) amends the conditions that a body established outwith Scotland must meet in order to qualify for the exception. It substitutes new subsections (3) and (4) for the existing subsection (3) of section 4 of the 2020 Act. New subsection (3) provides that a body qualifies for the exception if the body is registered in a register corresponding to the Scottish Charity Register. New subsection (4) provides that if there is no such register in the territory where the body is established then the body may qualify for the exception if its purposes consist only of one or more of the charitable purposes set out in section 7(2) of the Charities and Trustee Investments (Scotland) Act 2005 and the body provides public benefit within the meaning given by section 8 of that Act.
128. Paragraph 1(4) amends the repeal date of the 2020 Act so that it ceases to have effect on 31 December 2022 rather than on 31 December 2020.

Listed buildings and conservation areas: consents

129. The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (“the 1997 Act”) requires listed building consent for works to listed buildings and conservation area consent for the demolition of buildings within conservation areas.
130. Paragraph 2(2) and (3) amends section 16 of the 1997 Act to extend the duration of a listed building consent or a conservation area consent that would otherwise lapse during the emergency period because works authorised by the consent have not begun. The emergency period is the period beginning with the coming into force of these provisions and ending on 6 October 2020. The changes made to section 16 apply to conservation area consent by virtue of section 66(3) of the 1997 Act. Consents to which the provision applies will instead lapse at the end of an extended period (which ends on 6 April 2021) unless works have commenced before the end of the extended period.
131. Paragraph 2(3) enables the Scottish Ministers to make regulations to amend the definition of the emergency and extended periods.

Register of Inhibitions

132. Paragraph 3 relates to the Register of Inhibitions and makes provision for registration or recording in that register to proceed on the basis of electronic submission of documents and copies of documents to the Keeper of the Registers.
133. Paragraph 3(1) sets out that this provision applies to documents where electronic submission is not already permitted in terms of paragraph 1(4) of schedule 4 of the 2020 Act. Taken together, these provisions ensure that all documents capable of being registered in the register can be proceed on the basis of a document submitted to the Keeper by electronic means.
134. Paragraph 3(2) and (5) provides that documents may be signed by way of a basic electronic signature construed in accordance with section 7(2) of the Electronic Communications Act 2000 but also includes a version of an electronic signature which is reproduced on a paper document.
135. Sub-paragraph 3(4) sets out that these provisions apply when the means and form for electronic submission are specified as acceptable on the Keeper’s website.

Register of judgments

136. Paragraph 4 relates to the Register of judgments and modifies Chapter 62 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 ([S.I. 1994/1443](#)) for the duration the Act is in effect, making provision for registration and the issuing of documents to proceed on the basis of electronic submission to and by the Keeper of the Registers of documents and copies of documents.

137. Paragraph 4(2) introduces a new rule 62.102 which sets out that this provision applies to documents where electronic submission is not already permitted in terms of paragraph 1(4) of schedule 4 of the 2020 Act. Taken together, these provisions ensure that all documents capable of being registered in the register can be proceed on the basis of a document submitted to the Keeper by electronic means.
138. Paragraphs (2) and (6) of the new rule provide that documents may be signed by way of a basic electronic signature construed in accordance with section 7(2) of the Electronic Communications Act 2000 but also includes a version of an electronic signature which is reproduced on a paper document.
139. Paragraphs (3)(a) and (4) of the new rule also set out that the provisions relating to electronic submission to the register apply when the means and form for electronic submission are specified as acceptable on the Keeper’s website.
140. Paragraphs (3)(b) and (5) of the new rule provide for Keeper to issue documents electronically in a manner agreed either expressly or inferred in relation to the recipient.

Care services: giving of notices by the Care Inspectorate

141. Section 101 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) sets out how Social Care and Social Work Improvement Scotland (otherwise known as the Care Inspectorate) is to give a notice to a person providing, or seeking to provide, a care service when required.
142. Paragraph 5 modifies section 101 of the 2010 Act during the emergency period (the period for which paragraph 5 is in force). It temporarily changes the law on giving notice by “personal service” in relation to corporate bodies, and on giving notice electronically. The law on giving notice by “personal service” in relation to individuals and firms, and on giving notice by post, remains the same.
143. Section 101(1)(a)(ii) and (2), as modified, enables the Care Inspectorate, when delivering a notice personally to a body corporate (for instance, following an on-site inspection), to serve it on a wider range of people, including a care home manager or a director, secretary or other similar officer of the body. Section 101(1)(c), as modified, also enables the Care Inspectorate to send formal notices to registered care service providers, and those seeking to provide a care service, by electronic means for the duration of the emergency period.
144. Section 101(3) and (4), as modified, sets out the practicalities of giving notice by post or electronic means to care service providers and those seeking to provide a care service, including when receipt of those notices is deemed to have taken place.
145. Section 101(4), as modified, provides further detail in relation to notices given by the Care Inspectorate by electronic means. Notices under this paragraph may be given when a person has indicated to the Care Inspectorate that it is willing to receive them in this way. An indication of a person’s willingness may be specific to the notice in question or more generally applicable to notices or other documents of that kind. Willingness may be communicated directly to the Care Inspectorate or expressed more generally on a website or by some other similar expression. Unless a person has indicated otherwise, willingness to receive a notice by electronic means may also be inferred from a person’s previous willingness to receive notices or documents in this way.

Land and buildings transaction tax: additional amount

146. Schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the 2013 Act”) makes provision in relation to the additional dwelling supplement (“ADS”) which is an additional amount paid as part of Land and Buildings Transaction Tax (“LBTT”) where certain criteria are met.

147. Paragraph 6(3) amends schedule 2A of the 2013 Act by extending the period within which a previous main residence can be sold and a repayment of the ADS claimed for certain transactions.
148. Paragraph 6(3)(a) inserts a new paragraph 8B into schedule 2A which provides that the transactions to which the extended period for disposal of a previous main residence applies to are those where the effective date of the transaction is between 24 September 2018 and 24 March 2020. For those transactions, the extended period for disposal of a previous main residence will be 36 months.
149. Paragraph 6(3)(b) inserts new sub-paragraphs (3A) to (3D) into paragraph 19 of schedule 2A. Sub-paragraph (3A) provides a power for Scottish Ministers to amend, by order, the period of 36 months. Sub-paragraph (3B) provides a power for the Scottish Ministers to amend, by order, the period of 24 September 2018 to 24 March 2020. Sub-paragraph (3C) provides that the powers may only be exercised where the Scottish Ministers are satisfied that it is appropriate to make the order for a reason related to coronavirus. Sub-paragraph (3D) provides that an order under sub-paragraph (3A) or (3B) may have retrospective effect.

Non-domestic rates relief

150. Paragraph 7 amends section 153 of the Local Government etc. (Scotland) Act 1994. That section allows the Scottish Ministers, for any financial year, by regulations to prescribe rules to determine the amount payable as non-domestic rate in respect of any lands and heritages.
151. Paragraph 7 inserts a new subsection (4A) into section 153. New subsection (4A) allows the Scottish Ministers, during the financial year 2020-21, to make regulations prescribing rules that reduce or remit the amount payable as non-domestic rate. Those rules may reduce or remit the amount either for the whole of that year (including the period prior to the regulations being made), or for such period within that year as is specified in the regulations (including a period beginning prior to the regulations being made).
152. Paragraph 8 amends regulations made under section 153. It provides that no non-domestic rates are payable in respect of premises used wholly or mainly for production of newspapers and related news platforms. This relief applies on a daily basis, from the day after Royal Assent to the Act. The regulations that are amended provide for such relief to continue until and including 31 March 2021.

Execution of Documents, Etc.

153. Paragraph 9 of schedule 4 removes the requirement for the physical presence of certain parties in specific circumstances where an oath, affirmation or declaration is made, or where a document is executed.
154. Paragraph 9(1)(a) disapplies the requirement for a “relevant person”, as defined in sub-paragraph (2), to be in the physical presence of another person (for example a client) when that other person executes a document, takes an oath or makes an affirmation or declaration.
155. Paragraph 9(1)(b) disapplies the requirement for another person to be in the physical presence of a relevant person when that relevant person executes a document.
156. Paragraph 9(2) defines a relevant person and limits the circumstances where this Part applies to those where the requirement for physical presence referred to in paragraph 9(1) arises only by way of an enactment or the rule of law. Those circumstances can include
157. Paragraph 9(3)(a) confirms that this Part applies to the circumstances in paragraph 9(1) where the physical presence requirement is able to be fulfilled by both or either

a relevant person or another type of professional, but paragraph 9(3)(b) restricts the suspension of the requirement only where a relevant person is involved. The effect of 9(3)(b) is to retain the physical presence requirement for all other circumstances where a another type of professional is involved.

Freedom of information

158. Paragraph 10 amends schedule 6, Part 2, paragraph 6(2) of the 2020 Act , which confers discretion on the Scottish Information Commissioner to take into account the impact of coronavirus on an authority when determining whether that authority has failed to comply with the timescales set out in sections 10 and 21 of the Freedom of Information (Scotland) Act 2002 (“FOISA”) for complying with requests for information or requirements for review of responses to requests for information. The amendment introduces a further ground for the exercise of that discretion, allowing the Commissioner to consider the effect of the repeal of schedule 6, Part 2, paragraph 3 of the 2020 Act, which reset time periods for compliance with requests and reviews, when determining whether an authority has failed to comply with those relevant timescales. The Commissioner must also consider whether failure to meet the timescale was reasonable in all the circumstances. Paragraph 10 also inserts new paragraph 6(2A) into Part 2 of schedule 6 of the 2020 Act to require that in considering whether a failure was reasonable in all the circumstances, the Commissioner must regard the public interest in FOISA being complied with promptly as the primary consideration.
159. Paragraph 11 repeals schedule 6, Part 2, paragraphs 3, 4 and 5 of the 2020 Act. Paragraph 3 amended sections 10 and 21 of FOISA, to extend the time for compliance with requests for information and for reviews from 20 days to 60 days (and, in the case of the Keeper of the Records of Scotland, from 30 days to 70 days where the information is transferred by another Scottish public authority). Paragraph 4 dis-applied the Freedom of Information (Scotland) Act 2002 (Time for Compliance) Regulations 2016, which make provision about the time limits in relation to grant-aided schools and special independent schools. Paragraph 5 allowed the Scottish Ministers, by direction, to specify circumstances in which a Scottish public authority (other than the Scottish Ministers) may extend, by a maximum of 40 working days, the time for compliance with a request for information.
160. Paragraph 12 requires the Scottish Ministers to lay reports before Parliament every two months on their responses to FOI requests during the period that Part 2 of Schedule 6 of the 2020 Act is in force. Paragraph 12(2) sets out the information to be included in each report.

Low emission zones

161. Paragraph 13 places a requirement on the Scottish Ministers to, by 4 December 2020, lay a report before the Scottish Parliament on progress towards establishing low emission zones under Part 2 of the Transport (Scotland) Act 2019.
162. Paragraph 13(3)(a) and 13(3)(b) sets out the required content of the report, which should cover:
- an assessment of how progress has been impeded by coronavirus, and
 - how account has been taken of the impact low emission zones would have on the public health response to coronavirus.

Council tax: exempt dwellings

163. Paragraph 14 modifies Schedule 1 of the Council Tax (Exempt Dwellings) (Scotland) Order 1997. It creates an exemption from paying council tax for those properties that were occupied by one of the groups of individuals listed at paragraphs 10 and 12 of the Order, and which are unoccupied on or after 17 March 2020 for a reason relating

to coronavirus. This exemption applies until the property is occupied or the Act ceases to be in force.

Traffic Regulation

164. Paragraph 15 of Schedule 4 makes changes to the way that section 15 of the Road Traffic Regulation Act 1984 (the 1984 Act) is to apply while the provisions of the Act are in force. Paragraph 15(1) has the effect of extending the maximum duration of temporary traffic regulation orders (TTROs) made under section 14 of the 1984 Act, which can restrict or prohibit the use of certain types of roads, from 6 months to 18 months. Those roads are existing footpath, bridleway, cycle track or byway open to all vehicles. The maximum duration of TTROs on all other roads is unchanged and remains 18 months (see section 15(1)(b) of the 1984 Act).
165. This does not alter the length of time that a temporary (“pop-up”) cycle track or pedestrian walkway may be placed where it is created by reallocating existing vehicle carriageway to pedestrians and cyclists as that would already be subject to the 18 month maximum.
166. Paragraph 15(2) substitutes a reference to the six month time limit with a reference to 18 months in section 15(3) of the 1984 Act which deals with the power of the national authority (the Scottish Ministers) to direct that a TTRO may continue in force for a further period.

Restriction on giving grant to businesses connected to tax havens

167. Schedule 4, Part 12 introduces new conditions in relation to tax havens that must be met before the Scottish Ministers, or any public body administering grants on their behalf, may make a coronavirus-related grant to a company.
168. Paragraph 16(1) requires the Scottish ministers to take steps to satisfy themselves that the conditions are met.
169. Paragraph 16(2) further clarifies that a coronavirus-related grant may not be made if the conditions are not met.
170. Paragraph 16(3) provides that if, after a grant has been made, it is established that the conditions were not in fact met, the grant will be immediately repayable by the grantee.
171. Paragraph 16(4) sets out the conditions that must be met. Namely, that the grantee company must not be based in a tax haven, the subsidiary of a company based in a tax haven, the parent company of a subsidiary based in a tax haven nor party to an arrangement under which any of its profits are subject to the tax regime of a tax haven.
172. Paragraph 16(7) sets out the key definitions for this paragraph. It is specified that “tax havens” are as defined in the revised EU list of non-cooperative jurisdictions for tax purposes (2020/C 64/03).