

## POLICY NOTE

### THE CORONAVIRUS ACT 2020 (ALTERATION OF EXPIRY DATE) (SCOTLAND) REGULATIONS 2022

SSI 2022/40

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 90(2) of the Coronavirus Act 2020, and all other powers enabling them to do so. The instrument is subject to the made affirmative procedure.

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

The purpose of the instrument is to change the expiry date of the following provisions of the Coronavirus Act 2020 (“the Act”) from 24 March 2022 to 24 September 2022: section 18(2) and Part 2 of schedule 13 (registration of deaths and still-births); section 36 (vaccination and immunisation); section 37(2) and certain provisions of Part 2 of schedule 16 (temporary closure of educational institutions and childcare premises); section 38(2) and Part 2 of schedule 17 (temporary continuity – education, training and childcare); and section 49 and schedule 19 (health protection regulations).

#### **Policy Objectives**

The majority of the provisions of the Act came into force on 25 March 2020. The purpose of the Act was to enable the response to, and manage the effects of, the COVID-19 pandemic. (References in this Policy Note to COVID-19 are to be read as references to COVID-19 and coronavirus (which means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).) The Act contains temporary measures to either amend existing legislation or to introduce new powers and provisions designed to mitigate the impacts of COVID-19. As the Act was intended to respond to the COVID-19 pandemic, it is time limited. The majority of the Act’s provisions are subject to a two year sunset provision from when the Act was passed, by virtue of section 89(1) of the Act, which means they expire on 24 March 2022. The Act also includes powers to make regulations to amend the expiry date of provisions of the Act.

The alteration of the expiry date by this instrument means that certain provisions of the Act, which would otherwise expire on 24 March 2022, will be retained for a further period of six months. This will enable the Scottish Ministers to use powers within the provisions to respond to threats from COVID-19 and put in place measures as required. The Scottish Ministers consider that it remains necessary and proportionate to have these powers available during this time due to the ongoing nature of the pandemic, and the need to mitigate the impact of COVID-19, including the Omicron variant and any other new variant.

The provisions will instead expire on 24 September 2022, by which time it is the Scottish Government’s intention that the subject-matter of these provisions will be included in permanent Scottish legislation through the Coronavirus (Recovery and Reform) (Scotland) Bill<sup>1</sup>, subject to the Scottish Parliament’s approval of that Bill.

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<sup>1</sup> [Coronavirus \(COVID-19\) legislation - gov.scot \(www.gov.scot\) – www.gov.scot/collections/coronavirus-covid-19-legislation/](https://www.gov.scot/collections/coronavirus-covid-19-legislation/)

The Scottish Government is currently in the process of developing and engaging with stakeholders on an updated Strategic Framework to set out our priorities towards COVID-19 recovery. This will recognise that the extension of the provisions of the Act through this instrument is an important means of ensuring that Scottish Ministers have the necessary tools available to deal with the continued risks of the pandemic.

## **Legislative background**

Section 90(2) of the Act enables the Scottish Ministers to make regulations providing that any provision of the Act does not expire at the time when it would otherwise expire (whether by virtue of section 89 or any previous regulations under section 90), and expires instead at such later time as is specified in the regulations.

The Scottish Ministers have determined that the following provisions that would otherwise expire on 24 March 2022 should be retained for a further six months:

- **section 18(2) and Part 2 of schedule 13 (registration of deaths and still-births)**

Provisions relating to the remote registration of deaths and still-births have been in operation since March 2020. (The provisions make temporary modifications of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.) They allow for the complete, end-to-end operation of the death and still-birth registration process on a remote (i.e. non-physical) basis, including gathering of information from informants over the phone; transmission of key documents both to and from the registrar by electronic means; and allowing funeral directors to give information concerning the death of a person if the funeral director is responsible for the arrangement of the funeral and is authorised by a relative of the deceased. The provisions have been successful, with a wide range of stakeholders commending their flexibility, convenience and support for bereaved families.

These provisions also cut out completely an unnecessary site of COVID-19 exposure – the attendance, under existing registration law, of an informant at a local registration office to undertake an in-person death or still-birth registration, usually of at least half an hour's duration. As there are around 50,000 deaths and 200-300 still-births per year in Scotland, the prevention of thousands of hours of exposure to COVID-19 by members of the public and local authority registration staff has been – and will continue to be – very valuable in public health terms.

We considered allowing these provisions to expire, but the alternative to extension (reverting to a wholly in-person, physical attendance model for death and still-birth registration) presents significant risk to both the public and registration staff, especially as for example, with the spread of new variants such as Omicron has shown, and in the context of ongoing difficulties with staffing because of illness and periods of self-isolation, and because the last 18 months have shown that the remote model is valuable in and of itself, beyond the public health rationale.

Overall, the greater flexibility, convenience and support for families afforded by these provisions – accompanied by ongoing prevention of many thousands of hours of unnecessary COVID-19 exposure under an in-person model – argues for their

continuation through this instrument, as well as in the Coronavirus (Recovery and Reform) (Scotland) Bill.

- **section 36 (vaccination and immunisation)**

The provisions in section 36 remove the requirement for vaccinations and immunisations of persons against any disease to be delivered only by or under the direction or control of a medical practitioner. This requirement is potentially a significant restriction on the efficient provision of vaccinations and immunisations, which can be delivered safely without the direct involvement of a medical practitioner (noting that each vaccine has its own safety protocols) as well as an inefficient use of limited medical practitioner capacity. Section 36 of the Act amends section 40 of the National Health Service (Scotland) Act 1978 so it provides that the Scottish Ministers have the power to make arrangements for the vaccination or immunisation of persons against any disease.

Health Boards were directed by Scottish Ministers to support GP practices to deliver national vaccination programmes at the beginning of the pandemic where practice capacity was limited by sickness/self-isolation and then to directly deliver the expanded seasonal influenza programme and later to deliver the new COVID-19 vaccination programme when the COVID-19 vaccines were developed and approved. GP practices will likely continue to have limited capacity and vaccination and immunisation programmes will continue for the duration of the six month period provided for in this instrument.

If the temporary modification made by the Act is allowed to expire Health Boards will need to revisit the arrangements they have made during the pandemic to deliver both the expanded and new programmes outlined above as well as the other routine vaccination programmes they have taken on from GP practices. Some existing arrangements could become effectively unworkable if direct involvement or control by medical practitioners continues to be required.

- **section 37(2) and the following provisions of Part 2 of schedule 16 (temporary closure of educational institutions and childcare premises): paragraphs 6, 7 (except insofar as it would relate to a direction under paragraph 8 of schedule 16), 8(6) to (8), 10 and 11, and 12 and 13 (except insofar as they relate to a direction under paragraph 8 of schedule 16)**

To date the power to give “educational closure directions” (paragraph 8(1) of Part 2 of schedule 16) has not been used. It is considered unnecessary to extend this power in addition to the power to give educational continuity directions in Part 2 of schedule 17.

The powers which are being extended provide that Scottish Ministers may give a “boarding accommodation closure direction” to the relevant manager of a school boarding establishment or a “student accommodation closure direction” to the relevant manager of student accommodation. This will allow Ministers to direct those managing a “school boarding establishment”, which covers residential provision at or arranged by a school and school hostels, or “student accommodation”, which means residential accommodation for the purpose of being provided to students, to restrict

access to the establishments under their management for a specified period. In order to prevent the spread of infection, a direction may also provide for pupils/students to be confined in their accommodation for a specified period.

The duty in paragraph 7 on relevant authorities to have regard to any advice relating to the incidence or transmission of coronavirus from the Chief Medical Officer will also be extended. Other provisions of schedule 16 which relate to interpretation, public health advice, compliance and enforcement, and publication are being extended as, and so far as, they are necessary for the exercise of the remaining powers of direction.

Thus far during the COVID-19 pandemic these powers have not been used. The Scottish Ministers have relied on the use of non-statutory guidance and the strong relationships with sector bodies to ensure that measures to protect public health are in place in boarding school and student accommodation respectively. Nevertheless, the Scottish Ministers consider that it remains necessary and proportionate to have these powers available during this time due to the potential need to require public health measures to be taken to mitigate the impact of COVID-19, including Omicron and possible other variants.

- **section 38(2) and Part 2 of schedule 17 (temporary continuity – education, training and childcare)**

The powers allow Scottish Ministers to give “educational continuity directions” relating to the continuity of education and childcare, where it is necessary and proportionate. These directions could include directing the operator of an educational establishment to take specified actions as Ministers consider reasonable; requiring measures to ensure safe hygiene standards etc.; taking on additional functions relating to the provision of childcare and education; restricting access to educational establishments; requiring educational establishments to open, stay open, or reopen; or requiring the alteration of term dates, holiday dates or examination dates. A direction may also provide that a failure to comply with a specified statutory duty or time limit is to be disregarded to the extent it can be attributed to the direction being in place. Before giving a direction, Ministers must have regard to any advice relating to coronavirus from the Chief Medical Officer, and they must be satisfied that giving the direction would be necessary and proportionate in connection with the continued provision of education.

The powers were used extensively during the COVID-19 pandemic to date, in relation to local authority run schools and childcare, to support actions in society to prevent the spread of the virus, and to ensure that educational provision was maintained for children and young people in a way that was safe. This included measures, such as restricting access to schools and the phased reopening of schools and registered childcare settings, requirements relating to the provision of remote learning, ensuring the provision of free school meals to eligible pupils via alternative means and the provision of education and childcare for vulnerable children and young people and children of key workers. The directions issued also provided the education sector, in particular schools and day care of children settings, with certainty about the requirements being placed upon them during the pandemic.

- **section 49 and schedule 19 (health protection regulations)**

The powers in schedule 19 have been central to our response to the COVID-19 pandemic. They provide Scottish Ministers with a power to make regulations for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland. Without these powers, the Scottish Ministers would not have had any powers to introduce the requirements and restrictions necessary to control the spread of COVID-19.

Unless action is taken to extend these provisions Scottish Ministers would have no powers to introduce requirements or restrictions to control the incidence or spread of COVID-19 (for example, to require face coverings to be worn in certain settings), should such action be required after 24 March 2022.

The emergence of the Omicron variant has brought into sharp focus that COVID-19 still presents a real threat to the Scottish public and Scottish Ministers will need to be able to control the spread of COVID-19 using the powers in schedule 19 should action be required, for example, by limiting the number of people at events. It is therefore necessary that these powers remain available for use by Scottish Ministers if measures to respond to COVID-19 were needed during the period after 24 March 2022 and before the Coronavirus (Recovery and Reform) (Scotland) Bill comes into force.

## **Legislative procedure**

This instrument is subject to the made affirmative procedure. The provisions in the Act (section 95) only allow this procedure to be used and not the use of the draft affirmative procedure. However, to enable more time for parliamentary scrutiny, this instrument will follow the timescales for the draft affirmative procedure, allowing 40 days for approval before the instrument comes into force on 24 March 2022. The 40 day period for approval of the instrument will expire before the instrument comes into force.

## **Consultation**

A full public consultation was undertaken on the Coronavirus (Recovery and Reform) (Scotland) Bill, with questions specifically flagging that secondary legislation would be required to extend Coronavirus Act 2020 provisions from March to September 2022<sup>2</sup>. An analysis of responses has been published<sup>3</sup> together with responses where respondents gave permission for their response to be published<sup>4</sup>.

## **Impact Assessments**

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<sup>2</sup> [Covid recovery: a consultation on public health, public services and justice system reforms - Scottish Government - Citizen Space](https://consult.gov.scot/constitution-and-cabinet/covid-recovery/) – <https://consult.gov.scot/constitution-and-cabinet/covid-recovery/>

<sup>3</sup> [Covid Recovery - A consultation on public health, public services and justice system reforms: Analysis of consultation responses - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/covid-recovery-consultation-public-health-public-services-justice-system-reforms-analysis-consultation-responses/) – <https://www.gov.scot/publications/covid-recovery-consultation-public-health-public-services-justice-system-reforms-analysis-consultation-responses/>

<sup>4</sup> [Published responses for Covid recovery: a consultation on public health, public services and justice system reforms - Scottish Government - Citizen Space](https://consult.gov.scot/constitution-and-cabinet/covid-recovery/consultation/published_select_respondent) – [https://consult.gov.scot/constitution-and-cabinet/covid-recovery/consultation/published\\_select\\_respondent](https://consult.gov.scot/constitution-and-cabinet/covid-recovery/consultation/published_select_respondent)

Assessment of the impact of extending these provisions has been considered as part of the process for introduction of the Coronavirus (Recovery and Reform) (Scotland) Bill.

### **Financial Effects**

The Deputy First Minister and Cabinet Secretary for Covid Recovery confirms that no BRIA is necessary as the financial effects on the Scottish Government, local government or on business of the temporary extension of these provisions have been considered as part of the Coronavirus (Recovery and Reform) (Scotland) Bill process.

The BRIA and the other Impact Assessments for the Coronavirus (Recovery and Reform) (Scotland) Bill can be found at [www.gov.scot/collections/coronavirus-covid-19-legislation/](http://www.gov.scot/collections/coronavirus-covid-19-legislation/)

Scottish Government  
Covid Co-ordination Directorate

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