

Child Rights and Wellbeing Impact Assessment (CRWIA) for the SSI - The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Early Expiry of Provisions) Regulations 2024

Disclaimer

This document is an **assessment** of the likely effects of **The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Early Expiry of Provisions) Regulations 2024** on the rights and wellbeing of children and the Scottish Government will continue to review and update this document where required during the parliamentary decision-making process. Any future iterations will reflect an increased understanding of these impacts as the amount of evidence available continues to grow.

This impact assessment should be read in conjunction with the documents related to the [Coronavirus \(COVID-19\) legislation - gov.scot \(www.gov.scot\)](https://www.gov.scot/legislation/coronavirus-legislation), including the suite of impact assessments.

Child Rights and Wellbeing Impact Assessment

Introduction

1. Brief Summary (Guidance Section 3.2, pages 16 and 17).

Type of proposal:

(Please choose from either Bill, SSI or Decision of a strategic nature relating to the rights and wellbeing of children)

Applicable answer: SSI

Name the proposal: Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Early Expiry of Provisions) Regulations 2024.

Overall aims and intended purpose: The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (the Act) includes a schedule of temporary justice measures. The temporary measures were originally introduced in 2020¹, to give Scotland's justice system the necessary flexibility, resilience and support to respond to the emerging challenges of the Covid-19 pandemic. Section 52(1) of the Act originally provided that these measures will expire at the end of 30 November 2023. However, under section 52(3) the Scottish Ministers may seek to extend the measures for one additional year at a time, up to the end of 30 November 2025. They were previously extended until the end of 30 November 2024 by the Coronavirus (Recovery and Reform) (Extension and Expiry of Temporary Justice Measures) Regulations 2023. The effect of this SSI is to expire certain measures on 29 November 2024.

These measures are:

Part 5, Chapter 1: Criminal procedure time limits – summary only

Background: The temporary, extended limits were introduced in 2020 as it was realised that the pandemic would hold back the justice system's ability to progress cases. They were maintained in the Act on the basis that they were necessary to help the criminal justice agencies focus on responding to the backlog that developed as a result of the pandemic.

This provision applies to summary-only offences where no alternative time limit has been provided for in statute. Under the current extended time limit, prosecutions must begin within 12 months of an offence being committed. The pre-pandemic time limit was 6 months. There is no mechanism to allow this time limit to be extended on a case-by-case basis. That means that if the time limit is breached, the case will fall.

The Scottish Police Authority has undertaken considerable work to put in place additional capacity to analyse forensic samples in suspected drug-driving cases, and therefore, now there is no need to keep this time limit.

¹ In the Coronavirus (Scotland) Act 2020 ('the First Scottish Act') and the Coronavirus (Scotland) (No.2) Act 2020 ('the Second Scottish Act'). To note, some of the measures were modified slightly when incorporated into the 2022 Act.

Part 7: Prisons and young offenders institutions: power to release early

Background: Paragraph 25 of the schedule in the Coronavirus (Recovery and Reform) Scotland Act 2022 gives the Scottish Ministers a power to make regulations to release certain groups of people from prisons and young offender institutions early, if Ministers are satisfied that is a necessary and proportionate response to the effects (or anticipated) effects of Covid on a prison or on prisons generally. The regulations are for the purpose of protecting the security and order of the prison concerned or protecting the health, safety and welfare of those accommodated or working in the prison.

Part 7 is no longer relevant because it has been superseded by section 11 of the Bail and Release from Custody (Scotland) Act 2023 – which came into force in May 2024. This allows a wider emergency release power to Ministers. This is why we are expiring this measure.

Start date of proposal's development: The review and drafting of the consultation that informed the SSI commenced on 3 January 2024.

Start date of CRWIA process: 01 July 2024

Key terms / terminology:

- **Custody (in this document):** When a person who is suspected of committing an offence is held by the police in a police station.
- **Prosecution (in this document):** The legal proceedings against a person who is said to have committed a criminal offence.
- **SSI :** Scottish Statutory Instrument
- **Summary cases:** These are court proceedings for less serious criminal offences. The document which lists the offences a person is charged with is called a 'complaint'. These cases call before a justice of the peace or a sheriff sitting without a jury.
- **Summary-only offences:** These are offences that legally can only be heard by a justice of the peace or a sheriff sitting without a jury. The maximum penalty for such cases depends on the offence and is set out the legislation that creates the offence.

2. With reference given to the requirements of the UNCRC (Incorporation) (Scotland) Act 2024, which aspects of the proposal are relevant to children's rights? (Guidance Section 3.2, pages 17-19).

The expiry of some of the remaining temporary justice measures listed in this SSI are relevant to children involved in the justice system, such as child accused or child witnesses and victims. However, it does not impact upon any specific rights.

3. Please provide a summary of the evidence gathered which will be used to inform your decision-making and the content of the proposal. (Guidance Section 3.2, pages 19-22).

From:

- existing research/reports/policy expertise
- specific data requested from justice partners – Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service
- existing consultation data /feedback directly from children and young people
- consultation undertaken for this SSI
- public consultation undertaken for the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill

A consultation was undertaken for this SSI with justice partners, some third sector organisations, and victim support organisations – including those with a focus on children and young people’s rights. This was provided via an online Microsoft form. This can be viewed here: [Consultation \(office.com\)](https://office.com).

We also offered 1-1 meetings with organisations. Some organisations chose this, and in these instances, notes of the meetings were taken and used to inform the development of this SSI.

Evidence gathered for:

Part 5, Chapter 1: Criminal procedure time limits – summary only

Evidence:

- consultation feedback from the review of the temporary justice measures that lead to this SSI
- Data provided by the Crown Office and Procurator Fiscal Service (COPFS)
- Data provided by the Scottish Courts and Tribunal Service
- Additional COPFS data requested in summer 2024.
- Additional information provided by the Scottish Police Authority.
- Information collated for the CRWIA for the CRWIA and EQIA for the Coronavirus (Recovery and Reform) Scotland Act 2022.

Part 7: Prisons and young offenders institutions: power to release early

Evidence:

- consultation feedback from the review of the temporary justice measures that lead to this SSI.
- The Bail and Release from Custody (Scotland) Act 2023
 - Including consultation responses - <https://consult.gov.scot/constitution-and-cabinet/covid-recovery/> , and
 - the CRWIA produced to support the passage of the 2023 Act - <https://www.gov.scot/publications/bail-release-custody-scotland-bill-crwia/documents/>
- [A Guide to Youth Justice in Scotland: policy, practice and legislation \(cycj.org.uk\)](https://www.cycj.org.uk) – from the Children and Young People's Centre for Justice

4. Further to the evidence described at '3' have you identified any 'gaps' in evidence which may prevent determination of impact? If yes, please provide an explanation of how they will be addressed (Guidance Section 3.2, page 22).

No gaps identified.

5. Analysis of Evidence (Guidance Section 3.2, page 23).

Please find an analysis of the evidence for the temporary justice measures being to be repealed by this SSI on 29 November 2024.

Part 5, Chapter 1: Criminal procedure time limits – summary only

- As was found during the research for the Act's CRWIA, some respondents outlined negative consequences relating to the time limits measures. However, these concerns related to the impact on children and young people created by delays in cases coming to trial caused by the backlog of cases that has built up during the coronavirus pandemic instead of the time limits extension provisions themselves.
- High court caseloads, backlogs and delays are not a consequence of the time limit extension provisions.
- The summary time limits provision was extended for a further year in November 2023 principally because of the backlogs and capacity issues with forensic testing in drug driving cases, which meant that there was a real risk that drug driving cases could be time-barred if the time limit extension provision had been expired.
- It is also worth noting that the principal concern relating to delays in hearing summary-only offences relates to drug driving offences. While we do not have data specifically on offenders under 18, in 2021-22 (the most recent data available), fewer than 5% of those convicted of offences relating to driving under the influence of drink or drugs were under 21².
- The Scottish Police Authority undertook considerable work to put in place additional capacity to analyse forensic samples in suspected drug-driving cases. Therefore, the extension of the time limit from 6 months to 12 months after the date of the alleged commission of the offence is no longer required subject to saving provision being in place to retain the 12-month time limit in relation to offences alleged to have been committed prior to the expiry of this provision.

Part 7: Prisons and young offenders institutions: power to release early

- Part 7 of the Act has been superseded by the coming into force of section 11 of the Bail and Release from Custody (Scotland) Act 2023 (the "2023 Act") in May 2024. <https://www.legislation.gov.uk/asp/2023/4/section/11> .
- Section 11 of the 2023 Act establishes the power for Scottish Ministers to instruct the release of prisoners in response to the effects an emergency situation is having or is likely to have on prisons. This provides a broadly equivalent power to that in section 7 of the 2022 Act, including similar conditions under which Scottish Ministers can instruct an action and limitations on its use. However, the difference is that its use is

² [Supporting documents - Criminal Proceedings in Scotland, 2021-22 - gov.scot \(www.gov.scot\)](https://www.legislation.gov.uk/asp/2023/4/section/11)

not restricted to actions taken in response to the effects of the Covid-19 pandemic. As a result, any action to release prisoners in response to Covid-19 that could have previously been instructed by Scottish Ministers under section 7 of the 2022 Act could now be instructed in the same fashion under section 11 of the 2023 Act.

- Under these circumstances, expiring this measure does not have an impact on children nor young people.

6. What changes (if any) have been made to the proposal as a result of this assessment? (Guidance Section 3.2, page 23)

No changes have been made. However, we have taken note of the feedback provided by organisations where possible impacts on children and young people have been identified. However, through analysis of these potential impacts and wider legislation, no impacts were identified, and therefore changes were not required.

Conclusion

7. As a result of the evidence gathered and analysed against all UNCRC requirements, what is the potential overall impact of this proposal on children’s rights? (Guidance Section 3.2, page 23):

(Please choose from positive, negative, neutral or no impact, please note you can have both a positive and negative impact on children’s rights.)

Applicable answer(s): No impact

8. If you have identified a positive impact on children’s rights, please describe below how the proposal will protect, respect, and fulfil children’s rights in Scotland. (Guidance Section 3.2, page 24).

Not applicable.

9. If a negative impact has been identified, please describe below. Is there a risk this could potentially amount to an incompatibility? (Guidance Section 3.2, page 25).

Not applicable.

Mitigation Record

What options have been considered to modify the proposal in order to mitigate negative impact or potential incompatibility issues?

Not applicable

Issue or risk Identified per article/ Optional Protocol

Not applicable

Action Taken/ To Be Taken

Not applicable

Date action to be taken or was taken

Not applicable

10. As a result of the evidence gathered and analysed against all wellbeing indicators, will the proposal contribute to the wellbeing of children and young people in Scotland? (Guidance Section 3.2, pages 26-27).

(Please choose from yes, no or not applicable)

Applicable answer: No

If yes, please provide an explanation below:

11. How will you communicate to children and young people the impact that the proposal will have on their rights? (Guidance Section 3.2, page 27)

Given the minimal impact of this SSI on children's, and young people's rights, the development of an accessible CRWIA is not considered to be appropriate nor proportionate. However, we have tried to make this CRWIA accessible and have used clear language.

The CRWIA will be published on legislation.gov.uk and so will be available in the public domain for those who wish to access it.

Post Assessment Review and sign-off

12. Planning for the review of impact on children's rights and wellbeing (Guidance Section 3.2, pages 27).

As part of the decision-making process, plans for reviewing the impact on children's rights and wellbeing need to be developed.

- **How will the impact of the proposal on children's rights and wellbeing be monitored?**
- **When will you review and update the CRWIA if required?**

The effect of this SSI is simply to expire certain temporary provisions put in place to ensure the justice system could continue to function during the coronavirus pandemic. As these provisions are being expired, they do not require to be monitored.

13. Sign off

- Policy Lead Signature & Date of Sign Off: **Patrick Down / Phoebe Williams – 21/08/2024**
- Deputy Director Signature & Date of Sign Off: **Anna Donald – 29/08/24**

- Date CRWIA team first contacted: **02 August 2024**