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9 June 2020

Dear Ken

SCOTTISH GOVERNMENT REPORTING ON THE CORONAVIRUS ACTS

Section 15 of the Coronavirus (Scotland) Act 2020 requires us to review and report on the operation of the provisions in the Act every two months, with the first report due to be submitted to the Parliament no later than 14 days after the end of the first reporting period on 31 May.

In fulfilment of that requirement and my commitment to Parliament also to report on the UK legislation, I am now sending you a single report covering the provisions in both the Coronavirus (Scotland) Act 2020 and the Coronavirus Act 2020 for which the Scottish Parliament gave its legislative consent.

In my letter of 18 May to you, copied to the Convener of the Covid 19 Committee, I set out the approach we have developed for this, our first report, which places at its centre those provisions which we have judged at present to be of the most significant impact or interest and on which we are reporting in most detail.

In my statement in the Chamber today, I will set out in more detail the main elements of the report and, once the Parliamentary Bureau has decided to which Committee it should be referred, I will be happy to support evidence sessions as part of that.

On a final and related matter, as you will be aware, two amendments were agreed at Stage 3 of the Coronavirus (No. 2) (Scotland) Act 2020 which relate to the Scottish Government's reporting on coronavirus legislation.

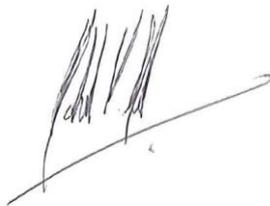
The Government supported Adam Tomkins MSP's amendment requiring reporting on Scottish Statutory Instruments made by Scottish Ministers relating to coronavirus.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

The Government also supported the amendment brought forward by Pauline McNeill MSP on the reporting of domestic abuse. Section 13 now places a duty on Ministers in undertaking reviews under section 12(1)(a), and reporting each review under section 12(1)(b), of the second Act to take into account available information about “the nature and the number of incidents of domestic abuse during each reporting period”. It also amends the first Coronavirus (Scotland) Act to introduce the same requirement in relation to reviews and reports under that Act.

These amendments will take effect from the second reporting period under the legislation as Ms McNeill acknowledged in her speech, and these matters are not therefore within the scope of this first report. They will however be incorporated into the approach for our second report.

I look forward to debating these matters further in the Chamber later today, and in advance of that I am copying this letter to the leaders of the opposition parties and to the Convener of the Covid 19 Committee.



MICHAEL RUSSELL

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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The Coronavirus Acts:

Two Monthly Report to Scottish Parliament

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Executive Summary

Overview

The coronavirus (COVID-19) outbreak is a severe and sustained threat to human life in Scotland. The human cost is, sadly, only too apparent. The impact of the pandemic on public services, business and private lives in Scotland has been profound. The magnitude of the challenge has required extraordinary measures. The handling of the COVID-19 crisis raises challenges of complexity and uncertainty. All of us have required to make substantial adjustments to cope with these unprecedented times.

It has fallen to the Scottish Government and to the Scottish Parliament to ensure that we have the necessary legislative powers, first and foremost to protect the lives and health of people living in Scotland, but also to offer what support we can to every part of the economy, the public sector, and the third sector.

The Government has legislated for a range of powers to match these exceptional challenges. In seeking the Parliament's approval for the necessary powers, the Government has been clear from the outset about two key points. First, that the powers taken should be proportionate to the challenge and last only as long as required in recognition of the significant issues raised by these powers in terms of human rights impacts. Second, that the Scottish Parliament must have continued oversight of the continued necessity of those powers and hold Scottish Ministers to account for their use.

This report forms a key plank in the Scottish Government's accountability to Parliament for the retention and use of these powers. As we have throughout the pandemic, Scottish Ministers will continue to be answerable to Parliament for how the Scottish Government is responding to the pandemic, including the use of statutory powers.

Coronavirus Legislation

This report covers the powers contained in the following Acts:

- The Coronavirus Act 2020 (the 'UK Act') – covering the provisions for which the Scottish Parliament gave legislative consent.
- The Coronavirus (Scotland) Act 2020 (the 'Scottish Act').

In addition to the powers contained in the above Acts, the second report to Parliament which will be due after the second reporting period ends on 31 July 2020 will also cover:

- The Coronavirus (Scotland) (No. 2) Act 2020 (the 'second Scottish Act').
- Reporting on all Scottish Statutory Instruments (SSIs) made by Scottish Ministers where the primary purpose relates to coronavirus.

The UK Act and the Scottish Act provide new powers and measures to help protect the public, maintain essential public services and support the economy. These measures are necessary because of the unprecedented public health and economic challenges posed by the pandemic.

The Four-nations Coronavirus Action Plan which was published on 3 March 2020 outlined our collective approach and closely-integrated planning process in place, including changes to legislation where needed, to help prevent the spread of the outbreak and combat the impact and consequences of coronavirus.

The provisions in the UK Act, which were the result of intensive work between the UK Government and the Devolved Administrations, cover a range of topics and sectors, including bespoke provisions for Scotland to reflect our different legal systems in devolved areas. The Scottish Act contains a range of further powers which focus on three headline areas - adjustments to the justice system to ensure essential justice business continues, provisions designed to ensure businesses, consumers and public services continue to operate effectively, and adjustments to the law on evictions to protect those renting their homes in the private and social sector.

Our approach to reporting

We have always made clear that it would be essential that this legislation be supported by safeguards including regular reporting and review, and these were built into the Scottish Act. Section 15 of the Scottish Act requires Scottish Ministers to review the operation of the provisions of Part 1 of the Act in each reporting period, and every two months, report on the status of the provisions and make a statement that they are satisfied that the status of those provisions is appropriate. This first report covers the reporting period up to 31 May 2020.

Whilst the UK Act does not contain equivalent reporting requirements for the Devolved Administrations to those which require the UK Government to report on its non-devolved provisions every two months, I gave a commitment when the Scottish Parliament considered the Legislative Consent Memorandum for the UK Act that the Scottish Government would put in place its own reporting arrangements. These would be consistent with the reporting requirements established within our own Scottish Act.

Our approach has required careful consideration to ensure that we can balance openness and transparency with the need to avoid placing undue pressures to provide information on those at the heart of the coronavirus response. In bringing forward our legislative proposals we have taken every effort to place human rights at the heart of our approach. We fully recognise that some measures in the legislation will have greater impact than others on individuals or groups, and varying implications for equality and rights.

The approach we have developed for our first report places at its centre those provisions which we have judged, at present, to be of the most significant impact or interest because of their impact on human rights or because they are areas that

Parliament has indicated a particular interest. Those categories of provision will be reported on in most detail in this and future reports.

This first report marks the beginning of our reporting process, with the new measures having been in place for only a short time, and new monitoring and reporting arrangements are being established or are in the process of being established to support their operation. We will continue to develop these arrangements and we will keep our overall approach under review in response to the requirements of the Scottish Parliament.

As noted above, in developing our approach to legislation and reporting, human rights impacts have been a key consideration. In this and subsequent reports we are seeking to provide evidence as far as is possible about those impacts for specific provisions. Examples are also given of where equality and rights have been considered as part of approaches to data collection on the measures contained in the Acts and, in recognition of the importance of understanding impacts of the use of these powers across the various different parts of society, in Scotland and across the UK, we are committed to looking at where we can include information disaggregated by protected characteristics in our reporting. This is an area of our reporting where our approach will continue to develop in response to how the powers in the legislation are used, and the data collections which are available as part of ongoing monitoring and implementation. We recognise that the Parliament's Equalities and Human Rights Committee is paying particular attention to this in relation to the Government's response to the crisis.

Statement by Ministers on necessity and status of provisions

Scottish Ministers have undertaken a review of the operation of the provisions of Part 1 of the Scottish Act, and the provisions of the UK Act for which the Scottish Parliament gave legislative consent, in order to consider whether the provisions remain necessary. Ministers are satisfied that the status of those provisions at the end of the reporting period is appropriate.

The report contains information as required by section 15 of the Scottish Act on all provisions in Part 1 of the Scottish Act and those provisions in the UK Act for which the Scottish Parliament gave its legislative consent.

Beyond this, we have reported in detail on a set of 14 powers covering both Acts, and supplementary information has been provided for these which gives more detail of their operation or, where powers have not been used, the reasons for this.

As at the end of the reporting period on 31 May 2020, all of the provisions in the UK Act for which the Scottish Parliament gave legislative consent have been commenced, with the exception of those in section 10 and sections 25-29 of the UK Act. All provisions in the Scottish Act commenced the day after Royal Assent, with the exception of paragraph 11(1) of schedule 3 which has not been commenced in the reporting period. No regulations have been made to suspend or revive any provision, or to alter the date of expiry.

Use of powers contained in the Coronavirus Acts

Our position has always been that creating additional powers does not automatically mean we will be required to use them and that decisions would be taken at the appropriate time, based on the situation here in Scotland and other parts of the UK.

Some of the powers in the legislation needed to be commenced immediately and have supported key elements of our response to the pandemic, whilst others have not been needed due to effectiveness of other action taken or because thresholds for use have not been met.

The UK Act enables Ministers to consider certain powers for suspension and revival if it is appropriate to suspend them at a particular point but they may be needed again in future, as well as to permanently expire provisions which are considered to no longer be needed in advance of the two year sunset clause in section 89. The Scottish Act contains similar provisions for suspension and revival, and provisions can be considered for expiry in advance of the six month sunset clause which applies to Part 1 of the Scottish Act. Taken together, these safeguards help to ensure the powers in the legislation can be used appropriately and proportionately, and that powers do not remain in force longer than they are required.

The regular reporting cycle for the provisions of both Acts will enable us to keep the overall operation of the powers under review and inform decisions on when specific measures are no longer needed. Our decisions will be guided by the course of the pandemic and by the expert advice underpinning the Scottish Government's overall response to it.

Additional information

Within the material for each of the provisions covered in the report, links have been included to other relevant published material including declarations and directions relating to, or made under the powers in the Acts.

Next steps

We welcome the opportunity to update the Scottish Parliament on the operation of the Coronavirus Acts and stand ready to engage with the Parliament in its scrutiny of this first report.

Michael Russell MSP
Cabinet Secretary for Constitution, Europe and External Affairs

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1. Introduction

- 1.1. As required by section 15 of the Coronavirus (Scotland) Act 2020 (the ‘Scottish Act’), Scottish Ministers have conducted a review of the provisions in Part 1 of that Act and have prepared this report. A review has also been conducted of the provisions of the Coronavirus Act 2020 (the ‘UK Act’) for which the Scottish Parliament gave legislative consent and these are also covered within this report.
- 1.2. As per the requirements of section 15 of the Scottish Act, the report includes information on the operation of provisions under Part 1 of the Scottish Act, and the provisions of the UK Act for which the Scottish Parliament gave legislative consent. This report also includes an update on the status of these provisions, and confirmation that Scottish Ministers are satisfied that the status of those provisions is appropriate. In addition to the information which is provided for all of the above noted provisions, we have also reported in more detail on those provisions which we consider to be, at this time, of most significant impact or interest.
- 1.3. The report also outlines the additional reporting which will be undertaken following the end of the second reporting period on 31 July 2020, on the provisions of the Coronavirus (Scotland) (No. 2) Act 2020 (the ‘second Scottish Act’) which received Royal Assent on 26 May 2020.

2. Background

- 2.1. The UK Act received Royal Assent on 25 March 2020. The Scottish Parliament gave its consent to the provisions of the Act as far as they relate to devolved matters on 24 March 2020.
- 2.2. Section 97 of the UK Act sets out the requirements for the UK Government to report on the status of non-devolved provisions within the UK Act every two months.
- 2.3. The UK Act does not set out an equivalent commitment for reporting by the Scottish Government or other Devolved Administrations. However, at the meeting of the Scottish Parliament’s Finance and Constitution Committee on 24 March 2020 and in the subsequent Chamber debate on the Legislative Consent Memorandum for the UK Act, the Cabinet Secretary for Constitution, Europe and External Affairs made a commitment to report on the use of the powers in the UK Act as far as they relate to Scotland, and to do so in a way that was consistent with the reporting arrangements to be set out in the then Coronavirus (Scotland) Bill, now the Scottish Act.
- 2.4. The Scottish Act received Royal Assent on 6 April 2020. Section 15 requires Scottish Ministers to report on the operation of Part 1 of the Act and the Scottish Ministers will also report in similar terms on provisions in the UK Act for which the Scottish Parliament gave legislative consent.

3. Our approach to reporting

- 3.1. Our approach is to provide a single report covering provisions in both the Scottish Act and UK Act. In due course, this approach will develop further in order to include reporting information on provisions in Part 1 of the second Scottish Act and on certain coronavirus-related Scottish Statutory Instruments (SSIs) made by Scottish Ministers, as set out within section 14 of the second Scottish Act.
- 3.2. In developing our approach, careful consideration has been given to ensuring that this balances openness and transparency with the need to avoid placing undue pressures on those individuals and organisations at the heart of the coronavirus response. We have recognised that some measures in the legislation may have greater impact than others in terms of their potential impacts on individuals or groups (people with one or more of the protected characteristics listed in the Equality Act 2010), or their implications for equality and rights. In addition, some provisions are of significant interest to the Scottish Parliament for other reasons. The question of how to determine significance of measures in this context is a matter on which Scottish Ministers have been keen to engage with the Scottish Parliament and wish to continue to do so.
- 3.3. The approach which has been developed for this first report is focused on those provisions which we have judged, at present, to be of the most significant impact or interest. For these provisions we have sought to provide detail over and above the reporting requirements in the Scottish Act. Assessment of the equality, human rights and children's rights impacts of the provisions is a central aspect of our reporting approach, and in developing our report we have sought to examine these impacts and to include or signpost to information disaggregated by protected characteristics where possible.
- 3.4. In view of the fact that these reporting arrangements are very newly-established and in some cases require new data reporting and other monitoring arrangements to be put in place, our approach will continue to evolve and develop as the powers are used and as more information on particular aspects of implementation becomes available. We will also keep our approach to reporting of impacts under review in line with legislation and in response to the views of the Scottish Parliament.

4. UK Government reporting and engagement

- 4.1. The UK Act is the result of intensive work between the UK Government and the Devolved Administrations as part of the approach set out in the Four-nations Action Plan¹, and in developing this report there has been consideration of how the UK and Scottish Government's approaches to reporting on the UK Act operate alongside each other.

¹ Coronavirus (COVID-19) action plan - <https://www.gov.uk/government/publications/coronavirus-action-plan>

4.2. The UK Government published its first two monthly report² on the status of the non-devolved provisions of the UK Act on 29 May 2020.

4.3. The Scottish Government will continue to engage and work with the UK Government and other Devolved Administrations on the implementation and operation of the UK Act and to help ensure respective reporting arrangements operate successfully and appropriately alongside each other, to support robust and effective scrutiny of the legislation.

5. Further Reporting

5.1. The second Scottish Act received Royal Assent on 26 May 2020 and came into force on 27 May 2020.

5.2. Section 12 of the second Scottish Act requires Scottish Ministers to undertake a review of the operation of the provisions of Part 1 of that Act, with a view to considering whether those provisions remain necessary. It requires that every two months, following the end of the reporting period, that a report is prepared which sets out the status of the provisions under Part 1 of that Act, and which includes a statement from Scottish Ministers that they are satisfied that the status of those provisions is appropriate.

5.3. Section 14 of the second Scottish Act requires Scottish Ministers to report on all SSIs made by Scottish Ministers where the primary purposes relates to coronavirus. This does not apply to SSIs made by Scottish Ministers under the first or second Scottish Acts or the UK Act, as SSIs made under these Acts are already being reported on.

5.4. The first report on the second Scottish Act will be due following the end of the reporting period on 31 July 2020, which coincides with the reporting period of the Scottish Act. As such, the reporting timetables for both Scottish Acts can be operated together, and at the same time.

5.5. In addition to these further elements which will become part of our approach in the second reporting period, we will keep our overall approach to reporting under review in response to the requirements of the Scottish Parliament.

6. Status update

6.1. Table One below provides detail on the status and operation of the provisions of the first Scottish Act, and the provisions of the UK Act for which the Scottish Parliament gave legislative consent.

6.2. As outlined above, our reporting approach will ensure that Parliament is given as much information as is available across all of the provisions in the relevant

² Coronavirus Act report: May 2020 - <https://www.gov.uk/government/publications/coronavirus-act-report-may-2020>

legislation, but with a particular emphasis on those provisions which have been identified as being likely to have the most significant impacts or interest. Where supplementary information has been provided, this is indicated within the 'operation of the provision in the reporting period' column within Table One, and further information is provided at section seven.

Table One – Status and operation of provisions

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 2 and schedule 1 - Eviction from dwelling-houses	The provisions increase the notice period across all eviction grounds in the private and social rented sector, except the abandonment and vacant property grounds, and for short Scottish secure tenancies, the antisocial behaviour grounds. The provisions provide the flexibility to extend the notice period for any grounds to a maximum of six months, should this be required. For the private rented sector, the provisions amend all of the eviction grounds a landlord can use to regain possession to make them discretionary. Prior to these provisions coming into force, some grounds for eviction were mandatory if all the conditions were met, meaning a Tribunal had to grant the order. This provision ensures that the Tribunal – once operational again – will be able to use discretion and take all factors into account before deciding whether to issue an eviction order or not.	In use Supplementary information provided – see section 7.1.1 for further information	Commenced on 7 April 2020 but no delegated powers used
Scottish Act	Section 3 and schedule 2 - Temporary extension of moratoriums on diligence	The provisions extend the period of any new moratoria to a period of six months, and removes the limitation that only one such moratorium can be applied for in any twelve month period.	In use Extended moratorium is available for individuals to apply. As at 18 May 2020, 90 applications for moratoria had been made under the new powers.	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 4 and schedule 3 - Children and vulnerable adults – Part 1 – Children	<p>Child protection provisions: The provisions remove the requirement for a second working day hearing to be held following the issuing of a Child Protection Order, and to amend timescales in relation to the issuing of Child Assessment Orders.</p> <p>Children’s hearings provisions: The provisions relax existing requirements for the composition of children’s hearings, the administration and conduct of children’s hearings, and there are extensions to the timescales for when certain legal orders must be reviewed and appeals against legal orders lodged.</p> <p>Looked after children provisions: The provisions extend the timescales for review of children’s cases when they are placed in different forms of accommodation and enable Local Authorities to use foster carers more flexibly to look after additional children when necessary.</p>	<p>Provisions around Child Assessment Orders – not in use</p> <p>Provisions around Child Protection Orders – in use</p> <p>Provisions around children’s hearings – in use</p> <p>Looked after children provisions - in use</p> <p>Supplementary information provided – see section 7.1.2 for further information</p>	Commenced and still in force
Scottish Act	Section 4 and schedule 3- Children and vulnerable adults – Part 2 – Vulnerable adults	Paragraph 11(1) modifies the application of certain principles of existing legislation relating to adults with incapacity and makes changes to guardianship rules. Paragraphs 11(2) and 11(3) effectively ‘stop the clock’ on the duration of guardianship orders and certificates authorising medical treatment for the period the emergency legislation is in force.	<p>Section 11(1) – not in use</p> <p>Sections 11(2) and 11(3) – in use</p> <p>Supplementary information provided – see section 7.1.3 for further information.</p>	<p>Section 11(1) – not yet commenced</p> <p>Section 11(2) and 11(3) - commenced on 7 April 2020 but no delegated powers used</p>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 5 and schedule 4, part 1 - Courts and tribunals: conduct of business by electronic means	<p>These provisions allow documents produced by a court or tribunal, or connected with criminal or civil proceedings, to be signed and transmitted electronically, removing the requirement for physical movement and contact. This enables documents to be sent, served and lodged by means of email or other electronic means.</p> <p>The provisions also provide that any participant in either criminal or civil proceedings (judge, clerk, legal representatives, parties to proceedings, accused, convicted persons, appellants and witnesses) can take part in any proceedings by way of live visual (television) or audio (telephone) link from any location.</p> <p>This extends to the ability to conduct fully audio or video-enabled procedural hearings, where no one is physically in the same place, or in a court or tribunal building. The provisions create a default position in which requirements for physical attendance at any court or tribunal hearings are suspended. This presumption can be overridden by the court or tribunal in any case by directing the physical attendance of any party.</p>	<p>In use</p> <p>Justice organisations have made rapid progress in utilising these provisions. Some documents are already being served and transmitted electronically. Remote hearings have begun in some areas of civil business including the use of video conferencing in civil appeals and the conduct of some civil hearings by telephone. A direction³ under paragraph 1(5) was made by the Lord President on 9 April 2020.</p>	Commenced and still in force

³ Lord President's Direction Exception to Electronic Signatures and Transmission of Documents for Commissary Business - <https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/coronavirus-temp-orders/coronavirus-miscellaneous/covid-19-website-article.pdf?sfvrsn=4>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 5 and schedule 4, part 2 - Fiscal fines	The provisions enable a wider range of cases to be dealt with by fiscal fine and, thereby, mitigate the impact of coronavirus on the justice system.	<p>In use</p> <p>The provision has commenced. In principle, the change could apply to any offence which is capable of being prosecuted in the summary courts. It is a matter for the Lord Advocate to determine the prosecution policy which prosecutors will apply as a result of this change. The Lord Advocate has advised Scottish Ministers that prosecution policy proceeds on the basis that the increase in fine amounts is intended to enable alternative action to be taken in a wider range of cases, where such action is assessed as appropriate, and not to increase the fine amount in individual cases which would previously have been dealt with by way of fiscal fine. The Lord Advocate has directed prosecutors to first consider offering a direct measure, in particular a fine, in relation to appropriate cases which would otherwise have proceeded in the Justice of the Peace court.</p>	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 5 and schedule 4, part 3 - Cases beginning with an appearance from custody	<p>The provisions introduce Scotland wide jurisdiction for sheriffs dealing with first appearances from police custody.</p> <p>This enables custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sheriffdom, no matter where the alleged offence took place. The provision also enables the court to hear any continuation of a case, up until a not guilty plea is tendered, if that occurs.</p>	<p>In use</p> <p>The provision has commenced, introducing a Scotland wide jurisdiction for sheriffs dealing with first appearances from police custody.</p> <p>This has allowed Police Scotland to put into operation its contingency plan to address the coronavirus outbreak which involves moving to a smaller number of more centralised custody suites. Across Scotland, 17 centralised police custody centres are now in operation. The consequence is that, for some of those held in police custody, it will not be possible for their first court appearance to take place in a court in the sheriffdom where the relevant offence was allegedly committed.</p> <p>The provision which is now in use enables custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sheriffdom no matter where the alleged offence took place, providing sheriffs with jurisdiction</p>	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			<p>throughout Scotland to deal with first appearances from police custody and any continuation of a case up until a not guilty plea is tendered. The provision creates the necessary flexibility to ensure the continued safe and effective operation of custody courts during the coronavirus outbreak and allows the court to deal with guilty pleas and move them out of the court system, and in doing so, minimising the number of cases that have to be transferred to local court.</p>	
Scottish Act	Section 5 and schedule 4, part 4 - Extension of time limits	The provisions suspend certain time limits contained in the Criminal Procedure (Scotland) Act 1995 so that a six month extension applies to all time limits in effect on the date of commencement, or taking effect during this period, with the exception of those relating to summary cases where the accused is held in remand, where the extension has effect for a three month period. This is intended to address delays in court cases caused by coronavirus.	<p>In use</p> <p>Supplementary information provided – see section 7.1.4 for further information.</p>	Commenced and still in force
Scottish Act	Section 5 and schedule 4, part 5 - Evidence	The provisions allow evidence by statement where a witness is unable to attend court because their attendance at court presents a health risk connected to coronavirus.	<p>In use</p> <p>However, given that there have been no jury trials since the provisions came into effect, and only a limited amount of summary court</p>	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			<p>business, it is likely that it has been used only to a very limited extent.</p> <p>It is likely that there will be a greater need for this provision as and when solemn court business recommences. The provisions are intended to ensure that the inability of witnesses to give evidence in court because, for example, they are self-isolating due to coronavirus, does not unnecessarily prevent criminal trials from proceeding. As such, it is likely to continue to be necessary for as long as public health guidelines around self-isolation and coronavirus remain in effect.</p>	
Scottish Act	Section 5 and schedule 4, part 6 - Community orders	<p>The provisions have extended time limits for unpaid work in Community Payback Orders by 12 months.</p> <p>Provisions also introduced powers for Scottish Ministers to postpone, alter, or revoke requirements in Community Payback Orders or Drug Treatment and Testing Orders.</p>	<p>Extension of time limits for unpaid work – in use</p> <p>Powers to postpone, alter or revoke requirements in Community Payback Orders or Drug Treatment and Testing Orders, which need to be made under the affirmative procedure – not in use</p> <p>Social Work Scotland is providing a weekly assessment based on Local</p>	Commenced on 7 April 2020 but no delegated powers used

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			<p>Authority justice social work returns which comment on the impact of coronavirus on services. To date, evidence suggests that the immediate effect of the provision (to extend timescales for unpaid work) has been sufficient to relieve pressure on justice social work during the lockdown period, though data will continue to inform decisions on whether powers to postpone, vary or revoke requirements may need to be used, which is considered reasonably likely as part of the recovery phase. Future deliverability of orders and capacity taking account of return of court business and the existing backlog will also inform decisions.</p>	
Scottish Act	Section 5 and schedule 4, part 7 - Parole Board	The provisions allow parole hearings to continue and avoid postponements. They also provide the power for the Chair of the Parole Board to delegate their functions to another member of the Parole Board, should they become incapacitated for any reason.	<p>In use</p> <p>Parole hearings have been continuing, and during the period 23 March 2020 to 5 May 2020, 155 cases were considered using Skype, 135 cases were heard successfully by teleconference, 107 witnesses have provided oral evidence, and 45 different legal firms have represented clients</p>	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			during teleconferenced tribunal/oral hearings.	
Scottish Act	Section 5 and schedule 4, part 8 - Release of prisoners	The provisions allow that Scottish Ministers, may by regulations, provide that a person who falls within a class of persons specified in the regulations, is to be released from prison early.	In use Supplementary information provided – see section 7.1.5 for further information.	Commenced and still in force
Scottish Act	Section 5 and schedule 4, part 9 - Legal Aid	The provisions allow for a reduction of the level of scrutiny required before interim payment may be made, enhanced powers of recovery in the event of overpayments resulting from interim payments, and removal of conditions for counsel to be able to apply for interim payment.	Not in use The Scottish Government is reviewing the requirement to use the powers under the provision and it therefore continues to be necessary.	Commenced on 7 April 2020 but no delegated powers used
Scottish Act	Section 6 and schedule 5 – Alcohol licensing and section 7 and schedule 6, part 1 - Licensing other than alcohol licensing	The alcohol licensing regime as set out in the Licensing (Scotland) Act 2005 ('the 2005 Act') contains a number of strict timescales and deadlines with little or no discretion available to Licensing Boards, if they are not adhered to. The provisions make modifications to the operation of provisions in the 2005 Act relating to: Licensing Boards holding hearings and producing reports; premises licenses; personal licence holders; the duties of Licensing Standard Officers; and notifications by the Chief Constable. The operation of the Licensing (Procedure) (Scotland) Regulations 2007 is also modified. These modifications introduce additional flexibility into the alcohol licensing regime. For example, they empower Licensing Boards to extend timescales and deadlines and	In use Licensing Boards and licensing authorities are responsible for the day to day administration of the civil licensing regimes in Scotland. Information on the operation of the civil licensing regimes and how the powers under the Act have been used is not held centrally. Examples of licensing authorities making use of the provisions include holding virtual licence meetings to progress day to day licensing business due to the coronavirus outbreak and physical distancing requirements. The provisions require to remain in	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
		<p>they also give further time to key licensing partners such as Police Scotland, when views are being sought on licensing decisions.</p> <p>The Civic (Scotland) Act 1982 ('the 1982 Act'), amongst other matters, sets out the framework for a number of civil licensing regimes (other than alcohol). For example the licensing and regulation of taxis and private hire cars, metal dealers, second hand dealers and the control of sex shops. The provisions set out a number of modifications to the operation of provisions in the 1982 Act and the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006. These modifications introduce additional flexibility. For example, they enable licensing authorities to extend timescales and deadlines.</p>	<p>place to enable the licensing regime to function effectively and to ensure, as far as practicable, people do not lose licenses through no fault of their own.</p>	
Scottish Act	Section 7 and schedule 6, part 2 – Freedom of Information (FOI)	<p>Paragraphs 3 and 4 extend the deadlines for responding to FOI requests and reviews by an additional 40 working days.</p> <p>Paragraph 5 gives Scottish Ministers the power, by direction, to specify circumstances where a Scottish public authority could extend the deadline.</p> <p>Where an appeal is made to the Scottish Information Commissioner (the Commissioner) in respect of a failure to comply with a relevant</p>	<p>In use until 26 May 2020 (the direction making powers under paragraph 5 were not used in the reporting period).</p> <p>Supplementary information provided – see section 7.1.6 for further information.</p>	<p>Powers under paragraphs 3, 4 and 5 - repealed by the Coronavirus (Scotland) (No 2) Act 2020</p> <p>Powers under paragraphs 6 and 7 - Commenced and still in force</p>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
		<p>deadline, paragraph 6 gives the Commissioner discretion, taking into consideration the public interest in prompt compliance, to decide that, where that is due to the effect of coronavirus or resulted from the repeal of the powers at paragraphs 3 and 4, an authority has not failed to comply.</p> <p>Paragraph 7 allows the Commissioner to issue notices by electronic means.</p>		
Scottish Act	Section 7 and schedule 6, part 3 - Duties in respect of reports and other documents	The provision allows statutory reporting requirements to be postponed, and documents to be made available online instead of being made physically available.	<p>In use</p> <p>These are generic provisions that apply to reporting and publication requirements across the public sector. The suspension of physical publication requirements is in use, since it is not currently possible to provide physical access to documents. The power to postpone reporting should only be used as necessary to enable public authorities to focus on the coronavirus response. Given the aim of reducing undue burdens, it would be disproportionate to request authorities to report on the individual uses of these powers, however the provision continues to be necessary for the reasons set out above.</p>	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 7 and schedule 6, part 4 - Local Authority meetings	The provisions allow Local Authorities to exclude the public from Local Authority meetings on public health grounds.	<p>In use</p> <p>The majority of Local Authority meetings have been cancelled and temporary decision making arrangements have been implemented.</p> <p>It would be disproportionate to request Local Authorities to report on the individual uses of this power when they are at the core of the coronavirus response and many of their services are under significant pressure and therefore, there is no central picture of the extent of the use of the provision. It is expected that these provisions will be needed until council offices can reopen to the public and/or other relevant aspects of Local Authority business resumes.</p>	Commenced and still in force
Scottish Act	Section 7 and schedule 6, and part 5 - Duties under the Public Finance and Accountability (Scotland) Act	The provisions allow Scottish Ministers, by further regulation, to amend the statutory reporting deadlines of Scottish administration annual accounts.	Not in use	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 8 and schedule 7, paragraphs 1 to 5 - Social security	<p>These provisions relax timescales which apply to clients seeking (and Social Security Scotland making) a redetermination, and clients bringing an appeal before the First-tier Tribunal for Scotland, where standard timescales cannot be met for reasons related to coronavirus. The provisions also require the Agency to complete a redetermination as soon as reasonably practicable within the new extended timescale. The original timescale of 16 working days is extended by an additional 9 weeks.</p> <p>Other provisions modify timescales for making applications where these have not been able to be met directly as a result of coronavirus. The provisions allow late applications across all forms of assistance where the lateness is due to coronavirus.</p>	<p>In use</p> <p>Supplementary information provided – see section 7.1.7 for further information.</p>	Commenced and still in force
Scottish Act	Section 8 and schedule 7, paragraphs 6 and 7 -Irritancy clauses in commercial leases: non-payment of rent or other sums due	The provision allows for the statutory period for non-eviction of commercial tenants for non-payment of rent to be extended from 14 days to 14 weeks.	<p>In use</p> <p>The measure came into force 7 April 2020 and as such, the first date an eviction could take place would be 14 July 2020.</p>	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 8 and schedule 7, paragraphs 8 to 10 - Duration of planning permission	The provision provides that if planning permission or planning permission in principle was to lapse during the emergency period, then the period within which development is to be commenced is extended.	In use It would be disproportionate to request planning authorities to report to the Scottish Government whenever this provision has been employed however, the provision continues to be necessary. The Scottish Property Federation has indicated that extending the duration of planning permission has been well received by its members, and that in some cases this has been a vital intervention to ensure that the development remained viable.	Commenced and still in force
Scottish Act	Section 8 and schedule 7, paragraphs 11 to 19 – Land Registration	The provisions enable the digital submission of applications to the property registers and extend the period of protection provided by advance notices.	In use The portal for the submission of digital applications was opened for public use from 27 April 2020 and is operating successfully, with use gradually being widened by way of a phased introduction. The Keeper of the Registers of Scotland has written to the Economy Energy and Fair Work Committee about volumes. The Keeper has agreed to consult with the Law Society of Scotland prior to declaring the property registers fully reopen, which in turn will end the extended protection for advance notices.	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
Scottish Act	Section 8 and schedule 7, paragraphs 20 to 22 - Anatomy Act	The provision extends the three year statutory time limit under the Anatomy Act 1984, for the retention of bodies after anatomical examination has concluded to that of the life of the emergency legislation. This ensures that during this pandemic, licence holders are not committing an offence by retaining a body beyond the statutory three years.	In use Anatomy schools have suspended their activities during the pandemic and are likely to continue to do so for the duration of the emergency legislation.	Commenced and still in force
Scottish Act	Section 8 and schedule 7, paragraphs 23 to 30 - Scrutiny of subordinate legislation in urgent cases	Paragraphs 23 to 30 of schedule 7 allow subordinate legislation which is subject to the affirmative procedure to be instead made under a made affirmative procedure where necessary by reason of urgency.	Not in use The provisions have not required to be used in the reporting period.	Commenced and still in force
Scottish Act	Section 8 and schedule 7, paragraph 31 – Business Improvement Districts	The provision extends the duration of Business Improvement Districts (BIDs) that are due to end in the coming months or have recently ended, without the legal requirement to hold a ballot.	In use The provision has been extremely helpful. BIDs such as Clarkston, Edinburgh West End and Dunblane which would have had to rebalot during this period have all been able to deliver critical coronavirus responses in partnership with their Local Authorities and others. Given the impact of coronavirus on local economies, a further amendment to BIDs legislation is being explored.	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			A £1 million BIDs Resilience Fund was also announced by the Scottish Government to enable BIDs to cover running costs and support communities and local businesses between April and October 2020.	
Scottish Act	Section 8 and schedule 7, paragraphs 32 and 33 - Muirburn	The provisions ended the current muirburn (management of moorland by burning and cutting) season early and they suspend muirburn for the period in which the provisions are in force. In ordinary circumstances, muirburn season runs from 1 October to 15 April inclusive in Scotland.	In use The powers commenced on 7 April 2020, resulting in the muirburn season ending earlier than the scheduled date of 15 April 2020. The provision continues to be necessary in order that the situation can be reviewed in autumn, including whether there remains a risk of muirburn placing unnecessary pressure on the emergency services, prior to the commencement of the next muirburn season.	Commenced and still in force
UK Act	Section 2 - Emergency registration of nurses and other healthcare professionals	Section 2 introduces schedule 1 which modifies the Nursing and Midwifery Order 2001, and the Health Professions Order 2001, to permit the independent statutory regulators, the Nursing and Midwifery Council (NMC) and the Health and Care professions Council (HCPC) to add people they consider to be “fit and proper and suitably experienced” to an emergency temporary professional register for the duration	In use While the significant bulk of this provision is reserved, it intersects with devolved competence through two professional groups – Practitioner Psychologists and Operating Department Practitioners – regulated by the HCPC. As such,	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
		of a public health emergency as declared by the Secretary of State.	<p>reporting on this provision was also included in the report to UK Parliament which was published on 29 May 2020⁴.</p> <p>The provisions have been exercised incrementally on a UK-wide basis by the NMC and HCPC in consultation with the four administrations, based on the anticipated service demand for an expanded workforce.</p>	
UK Act	Section 4 and schedule 3 – Emergency arrangements concerning medical practitioners: Scotland	Section 4 introduces schedule 3 which makes temporary modifications to the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 and creates a limited exception to the requirement that NHS GPs must be accepted on a register with their local Health Board (called a “performers list”) before beginning to practice in any GP surgery which provides NHS care in that Health Board’s area.	<p>In use</p> <p>The use of the powers is largely an administrative process and it is for Health Boards to decide whether GPs can perform whilst their application is pending. As such there is no central oversight of the extent of the use of the powers in the reporting period. The provisions continue to be required due to the continuous risk that Health Boards will be subject to staff shortages which could delay the standard processes around the performers list.</p>	Commenced and still in force

⁴ Coronavirus Act report: May 2020 - <https://www.gov.uk/government/publications/coronavirus-act-report-may-2020>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			Powers to further modify the application process by regulations have not been used.	
UK Act	Section 7 and schedule 6 - Temporary registration of social workers: Scotland	The provision increases the available social work workforce during the pandemic by inviting those on a career break, recently retired and final year students to join the register and return to/ join frontline services.	<p>In use</p> <p>A direction⁵ was made by Scottish Ministers on 30 March 2020 (under section 46C(1) of the Regulation of Care (Scotland) Act 2001) - directing the Scottish Social Services Council to consider applications for registration as a temporary social worker in accordance with section 46D of the 2001 Act.</p> <p>The temporary social work register has been established and over 200 registrants are available to be deployed to frontline services. Details have been shared with Local Authorities in order that they can access registrants should they need to recruit additional social workers.</p>	Commenced and still in force

⁵ Directions Under Section 46C(1) Of The Regulation Of Care (Scotland) Act 2001 (Direction To The Council To Consider Applications For Temporary Registration) - <https://www.gov.scot/binaries/content/documents/govscot/publications/regulation-directive-order/2020/04/coronavirus-covid-19-direction-under-section-46c1-of-the-regulation-of-care-scotland-act-2001/documents/coronavirus-covid-19-direction-regarding-the-registration-of-temporary-social-workers/coronavirus-covid-19-direction-regarding-the-registration-of-temporary-social-workers/govscot%3Adocument/Coronavirus%2B%2528COVID-19%2529%2B-%2Bdirection%2Bregarding%2Bthe%2Bregistration%2Bof%2Btemporary%2Bsocial%2Bworkers.pdf>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
UK Act	Section 10 and schedule 9 - Temporary modification of mental health legislation	The provision introduces schedule 9 which makes temporary modifications to the Mental Health (Care and Treatment) (Scotland) Act 2003, the Criminal Procedure (Scotland) Act 1995 and associated subordinate legislation, for example, permitting a reduction in the number of members required to constitute a mental health tribunal, and to permit a tribunal to make a decision without holding an oral hearing.	Not in use Supplementary information provided – see section 7.2.1 for further information.	Not yet commenced
UK Act	Section 12 - Indemnity for health services activity: Scotland	The provision grants Scottish Ministers the discretionary power to make indemnity arrangements for any person who is working within the NHS in Scotland, where the indemnity relates to coronavirus.	Scottish Ministers issued a direction ⁶ on 7 April 2020 under existing powers (the NHS (Scotland) Act 1978) to Health Boards to indemnify staff engaged in the coronavirus response. The powers around indemnity arrangements have not had to be used by Health Boards in the reporting period.	Commenced and still in force
UK Act	Sections 16 and 17 - Duty of Local Authority to assess needs: Scotland, and section 16:	The provisions under section 16 make modifications to the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995 and the Social Care (Self-Directed Support) Act 2013 to give Local Authorities flexibility for social care decision making in an emergency by discharging duties to conduct needs assessments and prepare carer support	In use Supplementary information provided – see section 7.2.2 for further information.	Commenced and still in force

⁶ Indemnity cover Direction - <https://www.sehd.scot.nhs.uk/publications/DC20200407negligence.pdf>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
	further provision	plans/young carer statements. Section 17 gives Scottish Ministers the power to issue guidance to Local Authorities about the exercise of their functions in consequence of the changes made by Section 16 of the UK Act.		
UK Act	Section 18 and schedule 13 - Registration of deaths and still-births etc.	Section 18 introduces schedule 13 which contains temporary modifications relating to the registration of deaths and still-births across the UK. Part 2 of schedule 13 relates to Scotland.	In use Provisions made by UK Ministers, with the consent of Scottish Ministers, commenced by regulations ⁷ on 26 March 2020 to allow death registrations without the need for in-person attendance at a registration office, and the provisions continue in active use. During the period 27 March 2020 to 20 May 2020 inclusive, 13,433 deaths and 31 still-births were registered.	Commenced and still in force
UK Act	Section 20 and schedule 14 – Review of cause of death certificates and	Provisions under part 1 enable Scottish Ministers to suspend the requirement for registrars to refer randomly selected Medical Certificates of Cause of Death under the Certification of Death (Scotland) Act 2011 for	Part 1 – in use – a direction ⁸ under paragraph 2(2) of schedule 14 came into effect on 26 March 2020. Scottish Ministers, in consultation with the Senior Medical Reviewer of	Commenced and still in force

⁷The Coronavirus Act 2020 (Commencement No. 1) Regulations 2020- <https://www.legislation.gov.uk/uksi/2020/361/made>

⁸ Direction under paragraph 2(2) of Schedule 14 - <https://www.gov.scot/binaries/content/documents/govscot/publications/regulation-directive-order/2020/03/coronavirus-act-2020-c-7-direction-under-paragraph-22-of-schedule-14/documents/direction-under-paragraph-22-of-schedule-14-of-the-coronavirus-act-2020-c-7/direction-under-paragraph-22-of-schedule-14-of-the-coronavirus-act-2020-c-7/govscot%3Adocument/Direction%2Bunder%2BParagraph%2B2%25282%2529%2Bof%2BSchedule%2B14%2Bof%2Bthe%2BCoronavirus%2BAct%2B2020%2B%2528C.7%2529.pdf>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
	cremations: Scotland	<p>review by the Death Certification Review Service.</p> <p>Provisions under part 2 give Scottish Ministers the power to disapply the offence under section 49 of the Burial and Cremation (Scotland) Act 2016, insofar as it relates to the signing of an application for cremation. It also enables Scottish Ministers to suspend sub-sections 53-55 of the Burial and Cremation (Scotland) Act 2016 and relevant associated provisions of the Cremation (Scotland) Regulations 2019.</p>	<p>the Death Certification Review Service directed National Records of Scotland to stop referring Medical Certificates of Cause of Death to the Death Certification Review Service for review.</p> <p>From 26 March to 11 May 2020, any certificate which was referred prior to the suspension was stopped, and the death registered. Any application for an interested persons review was paused.</p> <p>The suspension was lifted by a revocation direction⁹ which was exercised by Scottish Ministers on 11 May 2020, and the Death Certification Review Service started reviewing Medical Certificates of Cause of Death again.</p> <p>Part 2 – in use - on 8 April 2020, Scottish Ministers made two</p>	

⁹ Direction under paragraph 2(4) of schedule 14 - <https://www.gov.scot/binaries/content/documents/govscot/publications/regulation-directive-order/2020/05/coronavirus-act-2020-c-7-direction-under-paragraph-24-of-schedule-14/documents/direction-under-paragraph-24-of-schedule-14-of-the-coronavirus-act-2020-c-7--11-may-2020/direction-under-paragraph-24-of-schedule-14-of-the-coronavirus-act-2020-c-7--11-may-2020/govscot%3Adocument/DIRECTION%2B-%2Bs20%2BSchd%2B14%2BPart1%2B-%2Brevocation%2Bof%2Bsuspension%2Bunder%2Bparagraph%2B2%2B-%2BFINAL.pdf>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			determinations ¹⁰ which suspended certain provisions within the Burial and Cremation (Scotland) Act 2016 and the Cremation (Scotland) Regulations 2019. These provisions have been used to provide a certain degree of flexibility for cremation authorities and funeral directors working under different and challenging circumstances.	
UK Act	Section 22 - Appointment of temporary Judicial Commissioners	The provision relates to the appointment of Judicial Commissioners under the Investigatory Powers Act 2016. Judicial Commissioners are appointed by the Prime Minister, following consultation with Scottish Ministers. The purpose of this provision is to allow the Secretary of State to make regulations allowing the Investigatory Powers Commissioner to appoint temporary commissioners for a 6 month period, renewable to 12 months.	In use The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 (SI 2020/360) ¹¹ came into force on 27 March 2020. The Investigatory Powers Commissioner has appointed 10 temporary Judicial Commissioners. Further detail can be found on the Investigatory Powers Commissioner's Office website ¹² .	Commenced and still in force

¹⁰ Determination under paragraph 8(1) <https://www.gov.scot/publications/coronavirus-act-2020-c-7-direction-under-paragraph-81-of-schedule-14/>
Determination under paragraph 9(1) - <https://www.gov.scot/publications/coronavirus-act-2020-c-7-direction-under-paragraph-91-of-part-2-of-schedule-14/>

¹¹ The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020

<http://www.legislation.gov.uk/uksi/2020/360/made>

¹² <https://www.ipco.org.uk/>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
			This provision has elements of both reserved and devolved competence and as such, reporting on this provision was also included in the report to UK Parliament which was published on 29 May 2020 ¹³ .	
UK Act	Section 23 - Time limits in relation to urgent warrants under Investigatory Powers Act	The provision relates to time period for urgent warrants under the Investigatory Powers Act 2016 and gives the Secretary of State the power to make provision by regulations which extend the time periods applying to urgent warrants, should this be necessary given the impact that coronavirus is having, or is likely to have on the capacity of Judicial Commissioners to carry out their functions.	<p>In use</p> <p>The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 (SI 2020/360) came into force on 27 March 2020¹⁴. The variation to the urgent warrant procedure has ensured that intelligence and law enforcement agencies have the flexibility they need to protect national security and prevent serious crime.</p> <p>This provision has elements of both reserved and devolved competence and as such, reporting on this provision was also included in the report to UK Parliament which was published on 29 May 2020¹⁵.</p>	Commenced and still in force

¹³ Coronavirus Act report: May 2020 - <https://www.gov.uk/government/publications/coronavirus-act-report-may-2020>

¹⁴ The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 <http://www.legislation.gov.uk/uksi/2020/360/made>

¹⁵ Coronavirus Act report: May 2020 - <https://www.gov.uk/government/publications/coronavirus-act-report-may-2020>

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
UK Act	Sections 25 to 29 and schedule 15- Food supply	These provisions empower Scottish Ministers, by regulation, to require those involved in a food supply chain to provide information to help determine whether there is disruption (or risk thereof) to the supply chain. The provisions also provide enforcement powers and impose restrictions on the use of information.	Not in use The provisions continue to be required, to hold in reserve, in the event that voluntary provision of information by food supply chain participants breaks down. The voluntary provision of information continues to work well.	Not yet commenced
UK Act	Sections 34 and 35 - Temporary disapplication of disclosure offences: Scotland and Power to reclassify certain disclosure requests: Scotland	<p>The provisions under section 34 give Scottish Ministers the power to issue a direction that disapplies or modifies the offences under section 35 (organisations not to use barred individuals for regulated work) and section 36 (personnel suppliers not to supply barred individuals for regulated work) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”).</p> <p>The provisions under section 35 give Scottish Ministers the power, where they receive certain types of disclosure requests under the PVG Act, to treat those as a disclosure request which simply confirms whether or not the individual is in the PVG Scheme and if they are barred.</p>	Not in use Supplementary information provided – see section 7.2.3 for further information.	Commenced on Royal Assent but no delegated powers used
UK Act	Section 36 - Vaccination and immunisation: Scotland	The provisions amend section 40 of the National Health Service (Scotland) Act 1978. The requirement in that section, that vaccinations and immunisations be administered by medical	In use	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
		practitioners or persons acting under their direction and control, is removed.	On 7 April 2020, Scottish Ministers made directions ¹⁶ under section 2(5) of the National Health Service (Scotland) Act 1978, to support vaccination delivery by GP practices where they are affected by coronavirus.	
UK Act	Section 37 and part 2 of schedule 16 and section 38 and part 2 of schedule 17 - Temporary closure of educational institutions and childcare premises, and Temporary continuity: education, training and childcare	<p>Section 37 introduces schedule 16 which relates to the temporary closure of educational institutions and childcare premises. Scottish Ministers are given the power to issue directions to restrict access to schools and other educational premises. Part 2 of schedule 16 relates to Scotland.</p> <p>Section 38 introduces schedule 17 which makes provision allowing directions requiring the provision, or continuing provision, of education and childcare. Part 2 of schedule 17 relates to Scotland.</p>	<p>Schedule 17, Part Two – in use</p> <p>Schedule 16, Part Two – not in use</p> <p>Supplementary information provided – see section 7.2.4 for further information.</p>	Commenced and still in force
UK Act	Section 46 - NHS pension schemes: suspension of	The provision suspends pension scheme rules which prevent retired NHS staff from returning to work for more than 16 hours per week and require that some staff's pensions are abated	<p>In use</p> <p>The suspension of pension scheme rules has allowed former NHS staff</p>	Commenced and still in force

¹⁶ Provision Of Routine Vaccinations And Immunisations (Coronavirus Outbreak) (Scotland) Directions 2020 - https://www.sehd.scot.nhs.uk/publications/DC20200407Delivery_vaccinations_immunisations_coronavirus.pdf

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
	restrictions on return to work: Scotland	upon return to work. It also suspends the requirement that NHS staff reduce their pay by 10% if they elect to 'draw down' their benefits and continue working.	to return to frontline NHS roles, adding vital capacity to the NHS workforce. The measures allow skilled and experienced staff who have recently retired from the NHS to return to work, and they have also allowed retired staff who have already returned to work to increase their commitments if required, without having their pension benefits suspended.	
UK Act	Section 49 and schedule 19 - Health Protection Regulations: Scotland	Introduces schedule 19, which gives Scottish Ministers the powers 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.	In use Supplementary information provided – see section 7.2.5 for further information.	Commenced and still in force
UK Act	Section 51 and part 3 of schedule 21 - Powers relating to potentially infectious persons	Introduces schedule 21 which sets out powers which can be exercised in respect of persons where there are reasonable grounds to suspect that they are “potentially infectious”. This includes powers for public health officers, constables and immigration officers to direct or remove a person to a suitable place for screening and assessment (or, in the case of public health officers, to request a constable to remove a person to such a place). There are also powers to require the person to stay in that place for the purposes of screening and assessment and powers for public health	Schedule 21 powers have been switched on by way of statutory declaration, however the powers have not been used in this reporting period. Supplementary information provided – see section 7.2.6 for further information.	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
		officers to impose or extend necessary and proportionate restrictions on a potentially infectious person.		
UK Act	Section 52 and part 3 of schedule 22 - Powers to issue directions relating to events, gatherings and premises	Introduces schedule 22 which gives Scottish Ministers direction making powers in relation to events, gatherings and premises. In particular a direction may prohibit or impose requirements or restrictions in relation to the holding of events, gatherings or impose prohibitions, requirements or restrictions in relation to the entry into, departure from, or location of persons in premises.	Schedule 22 powers have been switched on by way of statutory declaration, however the powers to make a direction have not been used in this reporting period. Supplementary information provided – see section 7.2.7 for further information.	Commenced and still in force
UK Act	Section 58 and schedule 28 – Powers in relation to transportation, storage and disposal of dead bodies etc.	Section 58 and schedule 28 contain powers relating to the transportation, storage and disposal of dead bodies and other human remains. If advice indicates that the number of people who might die from coronavirus is likely to significantly exceed the capacity to locally or nationally manage the deceased, designated Local Authorities and Scottish Ministers have the ability to take control of a component or components of the death management process.	Not in use The powers have not been used in the reporting period. However, although the powers have not been used in the reporting period, the provision is judged to continue to be necessary in order to ensure that the powers can be used in future if needed and in particular to ensure the ability to respond to particular pressures in a specific Local Authority area should these emerge at any point.	Commenced and still in force
UK Act	Sections 69 and 70 - Postponement	The provisions enable Returning Officers and the Presiding Officer to respectively postpone local government by-elections and by-elections	Section 69 – not in use – the provisions will only be relevant if a vacancy for a Scottish Parliament	Commenced and still in force

Act	Provision	Description of Provision	Operation of the Provision in Reporting Period	Status at End of Reporting Period
	of elections: Scotland	for constituency seats to the Scottish Parliament.	<p>constituency seat occurs during the period of the provision being in force.</p> <p>Section 70 – in use – in the reporting period ten local government by-elections have been postponed.</p>	
UK Act	Section 75 - Financial assistance for industry (disapplication of limit under section 8 of the Industrial Development Act 1982)	This provision provides that financial assistance provided under section 8 of the Industrial Development Act 1982 is not to count towards the limits set out in the subsection of section 8, if the assistance has been given in relation to the coronavirus.	<p>In use</p> <p>This provision has elements of both reserved and devolved competence. As set out within the provision, there are alternative reporting arrangements in place for this provision. A similar approach was taken by the UK Government and this was set out in its report to UK Parliament which was published on 29 May 2020¹⁷. The provision as it applies in Scotland continues to be necessary.</p>	Commenced and still in force

¹⁷ Coronavirus Act report: May 2020 - <https://www.gov.uk/government/publications/coronavirus-act-report-may-2020>

7. Supplementary information

7.1 Scottish Act

7.1.1 Section 2 and schedule 1 - Eviction from dwelling-houses

Description of Provision

- 7.1.1.1 The provisions increase the notice period across all eviction grounds in the private and social rented sector, except the abandonment and vacant property grounds and for short Scottish secure tenancies, the antisocial behaviour grounds. For the private rented sector, the provisions amend all the eviction grounds a landlord can use to regain possession to make them discretionary.

Operation of Provision in Reporting Period

- 7.1.1.2 Section 2, schedule 1, paragraph 2 makes all private rented sector eviction cases going before the First-tier Tribunal (Housing and Property Chamber) to be considered on a discretionary basis. These powers have not been exercised in the reporting period because the Tribunal and the courts have suspended business and eviction cases were not being heard in April and May 2020.
- 7.1.1.3 Section 2, schedule 1, paragraph 8 provides a power for Scottish Ministers, exercisable by the negative procedure, to modify the length of any period of notice specified to apply during the relevant period. In exercising this power, the Scottish Ministers cannot specify a notice period which is longer than six months. This power under the provision has not been used in the reporting period.
- 7.1.1.4 The provisions which extend the notice period to - in effect - halt any eviction action under the existing legislation including the Private Housing (Tenancies) (Scotland) Act 2016 and the Housing (Scotland) Act 2001 for up to six months, have been used in the reporting period. This applies to both the social and private rented housing sectors in order to ensure that the position is absolutely clear for all landlords in Scotland.
- 7.1.1.5 Before the provisions commenced, a tenant with a private residential tenancy could have been asked to leave their home within 28 days of a notice being served by the landlord, if they had been living in the property for six months or less; or if the landlord was using an eviction ground to do with the tenant's behaviour. Where a tenant had lived in a property for six months or more and the eviction ground did not relate to the tenant's behaviour, a landlord was required to give 84 days' notice. With the new provisions, the tenant can stay for up to six months.

Factors Considered to Determine Use and Continued Necessity

- 7.1.1.6 In this reporting period, in order to assess the continued necessity of the provision, the Scottish Government has considered various sources of information, including results from a recent poll which was commissioned by Citizens Advice Scotland and which was published on 30 April 2020¹⁸. This found that four in ten people in Scotland are concerned about income during the coronavirus pandemic and 31% are either very concerned or fairly concerned about paying rent.
- 7.1.1.7 The provisions remain necessary to ensure that tenants have time to apply for, and receive, the available support in the short term and, if necessary, to give them time to plan for the longer term over this unprecedented crisis. The provisions also continue to be necessary in order to help mitigate any further pressure on housing, health and other public services.
- 7.1.1.8 The Private Rented Sector Resilience Group has been set up to provide a mechanism for key stakeholders to discuss key issues arising from the coronavirus outbreak and it will assist in monitoring the impact, and continuing need for, these provisions.
- 7.1.1.9 The Social Sector Resilience Group meets weekly to discuss and resolve issues of common interest, to ensure that landlords can deliver and maintain essential services during the period of the coronavirus outbreak.
- 7.1.1.10 The Scottish Government is developing a process to analyse the immediate impact of the extended notice periods. This analysis will be used to help inform the future assessments of continued necessity of these provisions. It will seek to gather evidence on the financial vulnerability of tenants, as well as the impact on the financial vulnerability of landlords.
- 7.1.1.11 In addition to the Equality Impact Assessment which was carried out by the Scottish Government prior to the introduction of the legislation, the Scottish Government assessed the potential impact of these provisions on human rights. Consideration has also been given to the impact of the provisions on a landlord's human rights with regards to their ability to be able to regain possession of their property in relation to Article 1 of Protocol No. 1 to the European Convention on Human Rights. The Scottish Government's view is that the temporary nature of the provisions strike an appropriate balance between the landlord's rights in the property, and the rights of the tenant to be protected during the pandemic. The maximum period of notice that the landlord will have to provide will be six months and the provisions will not affect notices which have already been issued under existing notice periods. The above framework for analysing continued necessity which is being developed by the Scottish Government will help to inform the assessment of the impact of these provisions going forward.

¹⁸ Citizens Advice Scotland poll - https://www.cas.org.uk/system/files/publications/cas_-_wave_2_-_financial_concern_-_290420.pdf

7.1.2 Section 4 and schedule 3 – Children and vulnerable adults – Part 1 – Children

- 7.1.2.1 **Description of Child protection provisions:** The provisions remove the requirement for a second working day hearing to be held following the issuing of a Child Protection Order, and to amend timescales in relation to the issuing of Child Assessment Orders.
- 7.1.2.2 **Description of Children’s hearings provisions:** The provisions relax existing requirements for the composition of children’s hearings, and the administration and conduct of children’s hearings and there are extensions to the timescales for when certain legal orders must be reviewed and appeals against legal orders lodged.
- 7.1.2.3 **Description of Looked after children provisions:** The provisions extend the timescales for review of children’s cases when they are placed in different forms of accommodation and enable Local Authorities to use foster carers more flexibly to look after additional children when necessary.

Operation of Provisions in Reporting Period

- 7.1.2.4 This section provides supplementary information on the use of children’s provisions within Part 1 of schedule 3 of the Scottish Act. Guidance¹⁹ on the use of provisions has been published. The provisions have been separated into three groups: child protection provisions, children’s hearings provisions and looked after children provisions, as data comes from different sources and there are separate decision making structures to assess continued necessity of the provisions within each group.
- 7.1.2.5 The data in relation to the use of the powers under section 4 and schedule 3, Part 1 covers the period 7 April to 20 May 2020, unless specified otherwise below. Information on where data has been gathered has been included along with any caveats about the data provided.

Child protection provisions

No requirement for a second working day hearing to be held following the issuing of a Child Protection Order

- 7.1.2.6 Under the Scottish Act, the second working day children’s hearing is not required. Instead a children’s hearing to consider grounds for referral will sit on or before the eighth working day. Until the eighth working day, a child or relevant person can make an application for the Child Protection Order to be recalled or varied (ordinarily this would have been available until the second working day children’s hearing under the Children’s Hearings (Scotland) Act 2011) and for two working days following the second working day children’s hearing (if the order is continued or varied by that hearing).

¹⁹ Guidance on looked-after children and children’s hearings provisions - <https://www.chip-partnership.co.uk/wp-content/uploads/2020/04/Coronavirus-Scotland-Act-2020.pdf>

- 7.1.2.7 In the reporting period, there have been 82 Child Protection Orders. The use of this provision has meant that the Scottish Children's Reporter Administration did not have to hold second working day children's hearings in these cases.

Amendment of timescales in relation to the issuing of Child Assessment Orders

- 7.1.2.8 There were no Child Assessment Orders during the reporting period. Although there were no orders during the reporting period, the provisions continue to be useful and necessary, particularly in light of the need to ensure that services can assess vulnerable children who are not visible to services during coronavirus, when necessary.

Children's hearings provisions

Relaxation of requirement for children's panel to consist of three members and relaxation of requirement to have a gender mix on each children's hearing

- 7.1.2.9 The provisions include relaxation of the requirement for children's hearings to consist of three members and to have a gender mix. In the reporting period 797 hearings were held, of which five had fewer than three panel members in attendance, and one which did not have both male and female members²⁰.

Maximum period for which a Compulsory Supervision Order has effect

- 7.1.2.10 The Scottish Act provides that if a hearing has not taken place to review a Compulsory Supervision Order before it expires, the order will not expire, unless six months have passed since the expiry date or the child has attained the age of 18 years. However, alongside this, there is a duty on the Principal Reporter to arrange a hearing before the original expiry date, and if not, to arrange the hearing as soon as practicable thereafter.
- 7.1.2.11 Within the reporting period there have been 462 Compulsory Supervision Orders, where orders have been extended beyond their expiry date. This provision has only been used to the extent necessary driven by the practicalities of holding children's hearings in the current context, and the extent of their use will vary as the safety and operational context develops. Due to the severe restriction in the number of children's hearings which could be held, this provision has had the effect of extending a number of orders. Prioritisation of work has been essential to ensure continuity of protections for children and young people and putting in place appropriate

²⁰ This data is from Children's Hearings Scotland. It comes from reports from Area Support Teams (AST) from 7 April – 6 May 2020 and from 7 May 2020 onwards, data is drawn from survey of Panel Members feedback on hearings in which they participated and from AST reports. 317 responses were received, of which 276 were completed in full and 41 completed in part. It should be noted that the survey responses do not reflect reports on 100% of hearings. However, the National Convener requires AST to report when the powers have been used.

legal measures to keep children and young people safe. The Scottish Children's Reporter Administration has been unable to operate at anywhere near normal capacity as a result of social distancing and virus prevention measures which have been put in place and enforced. The Scottish Children's Reporter Administration is seeking to increase the number of hearings which can be held through the use of technology to allow "virtual" attendance. The Principal Reporter is applying a prioritisation framework to enable the timely consideration of individual cases to the maximum extent possible, in consultation with referring authorities and with children/relevant persons, and is closely monitoring the situation with a view to arranging such hearings as soon as practicable. While service user availability, views and preferences for rescheduling are only elements of 'practicability' - more significant considerations being need and risk, the Scottish Children's Reporter Administration has done so following dialogue with social workers and families. Those involved indicated that they would prefer to come back at a later date to a face to face children's hearing. Reporters are reviewing these arrangements on a case by case basis, and taking into consideration whether there would likely be a risk of detriment to the child's welfare if the Compulsory Supervision Order was not varied or terminated before the original expiry date.

7.1.2.12 During the reporting period there have been 113 children's hearings when orders were due to expire. The number of hearings being held has been increasing since 4 May 2020 as the system has adapted. As the recovery moves through particular phases, the Scottish Children's Reporter Administration will continue to review the necessity of the use of this provision and the scheduling of reviews as soon as practicable.

Maximum period for which Interim Compulsory Supervision Order (ICSO) or Interim Variation of Compulsory Supervision Order (IVCSO) has effect

7.1.2.13 To allow more flexibility for agencies seeking to respond in a prioritised way to the challenges posed by the coronavirus pandemic, paragraphs 4(2) and (3) of schedule 3 of the Scottish Act amend sections 86(3) and 140(4) of the Children's Hearings (Scotland) Act 2011. This provides that the maximum period for which an ICSO or an IVCSO has effect is:

- where the order is made by a children's hearing, 44 days, or
- where the order is made by a sheriff, such other period as the sheriff may specify.

7.1.2.14 As with the existing legislation, a hearing may make an ICSO or interim variation for a shorter period than the maximum.

7.1.2.15 Table Two below sets out the interim orders where the provision has been used (some children will have had more than one interim order issued in the period and the figures include orders which authorised secure accommodation). It is not possible to calculate how much time has been added; some orders will have had the maximum time (44 days for a

hearing/possibly longer for the Sheriff Court) and others will have had different times up to the maximum.

Table Two – Interim orders where the provision has been used

Interim Order Type	7 April - 20 May 2020
ICSO	284
IVCSO	152
Court ICSO / IVCSO (including following appeal)	244
Total	680

Period within which children’s hearing must be heard in certain cases - secure care and other place of safety placements

7.1.2.16 In the period 7 April and 21 May 2020, of 16 interim orders authorising the use of secure accommodation, 9 used the extended timescales which are available under the provision. The provision allows the timescales to 7 working days from 3 working days in situations that the existing permitted timescales i.e. 3 days, is not practicable.

Extended timescale following emergency transfer of a child or young person to secure accommodation

7.1.2.17 The Scottish Act allows the Principal Reporter the discretion to extend the period within which a Children’s Hearing must be held by 24 hours (from 72 hours to 96 hours) where it is not practicable to meet the existing timescale. The Scottish Children’s Reporter Administration has not recorded any cases where a young person has been kept in secure accommodation for an additional 24 hours before coming to a children’s hearing.

Modification of certain time limits for making and determination of appeals

7.1.2.18 Paragraph 7 of schedule 3 of the Scottish Act extends the time limits for the making, disposal or determination of appeals or the making or lodging of applications. Disaggregated is data not available from the Scottish Children’s Reporter Administration or the Scottish Courts and Tribunals Service. The Scottish Government intends to explore with the Scottish Children’s Reporter Administration and Scottish Courts and Tribunals Service whether it could be made available for subsequent reporting periods.

Dispensation with physical attendance at children's hearings

7.1.2.19 The provision provides that there is no longer any obligation on a child or relevant person to attend a children's hearing unless a children's hearing specifically directs that personal attendance is required.

7.1.2.20 All of the 797 children's hearings that have taken place in the reporting period have been 'virtual children's hearings' as children, family members, professionals, reporters and the decision makers (panel members) have been unable to attend the public spaces in children's hearings centres.

Authentication of children's hearings documentation by electronic signature

7.1.2.21 This power has been used in all of the 797 children's hearings held in the reporting period.

Looked after children provisions

7.1.2.22 The timescales for review of children's cases when they are placed in kinship care are extended and Local Authorities are enabled to work with foster carers more flexibly to look after additional children when necessary. Data on these provisions is not available as yet. The Scottish Government is considering the most effective way to provide supporting information without adding an additional burden on Local Authorities which are already providing significant data and reporting to the Scottish Government. Informal feedback has indicated that the kinship provisions have allowed social work teams to focus home visits for the most vulnerable children. The fostering provisions have not been used to a great extent as existing fostering provision has coped with demand, and social work teams have tried to find longer term placements which will provide more stability for children.

Factors Considered to Determine Use and Continued Necessity

7.1.2.23 In relation to the provisions covering child protection and looked after children, the Scottish Government is aware that there is continued pressure on services in relation to vulnerable children and these provisions continue to be necessary.

7.1.2.24 The main factors which have been considered in the assessment of continued necessity of the children's hearings provisions include: prevailing Government guidance and public health advice, an assessment of the impact of the pandemic on the health and availability of staff and volunteers, and an assessment of the impacts on vulnerable and disadvantaged children and families. In the context of this emergency, these provisions are designed to enable best use of very limited resources in Local Authorities, and the children's hearings system, so that efforts can be focused on safeguarding the welfare of Scotland's most vulnerable children and on supporting families and carers who need it most. The

measures in the Scottish Act are limited to those considered necessary to support and protect children's rights and promote their welfare and well-being in accordance with obligations under United Nations Convention on the Rights of the Child.

- 7.1.2.25 The Scottish Government is in regular dialogue with the children's services sector and children's hearings partners to monitor the impact of the pandemic on service provision and the protections afforded to children.

7.1.3 Section 4 and schedule 3 - Children and vulnerable adults – Part Two - Vulnerable adults

Description of Provision

- 7.1.3.1 Paragraph 11(1) modifies the application of certain principles of existing legislation relating to adults with incapacity and makes changes to guardianship rules. Paragraphs 11(2) and 11(3) effectively 'stop the clock' on the duration of guardianship orders and certificates authorising medical treatment for the period the emergency legislation is in force.

Operation of Provision in Reporting Period

- 7.1.3.2 The powers under paragraph 11(1) of this section have not yet commenced and therefore the powers have not been used in the reporting period.
- 7.1.3.3 Paragraphs 11(2) and 11(3) of this section commenced on 7 April 2020 and the powers under these sections have been used in the reporting period. In relation to expiry of guardianships, in the period 7 April to 21 May 2020, 150 guardianships were due to expire and will have had the clock stopped when the provisions came into force.

Factors Considered to Determine Use and Continued Necessity

Paragraph 11(1)

- 7.1.3.4 The aim of the amendments to section 13ZA of the Social Work (Scotland) Act 1968, was to put provisions in place to ensure the safety of the adult, for instance where they might be in an acute hospital ward which was expecting a large influx of coronavirus patients, putting the adult at risk. In these cases the section 13ZA amendment provides a way to move the adult quickly, and with legal authority, to a more suitable location.
- 7.1.3.5 In the reporting period, the powers under this section have not required to be used. This may be in part due to a reduction in delayed discharge since the provision was introduced. Delayed discharge figures, which are monitored by the Scottish Government, have come down substantially since the section 13ZA amendments were put in place. As of 18 May 2020, they have reduced by 59% (950 beds) since the 4 March 2020 baseline. The Scottish Government is liaising very closely with Health and Social Care

Partnerships on their procedures around discharge in order to monitor the continued necessity of the provision.

- 7.1.3.6 Amendments to section 13ZA remove the requirement to consult with the adult or interested parties and also allow the Local Authority to use the powers in section 13ZA where there is an existing guardian, welfare attorney or intervener with relevant powers.
- 7.1.3.7 Article 5 of the European Convention on Human Rights (right to liberty and security) could be engaged in particular with these amendments as they could be used to empower the Local Authority to speedily move adults from acute hospital beds to other more appropriate accommodation.
- 7.1.3.8 Where the amendments to section 13ZA are utilised to provide services to the adult by way of moving them in to a care home, Article 5 is likely to be engaged and it is very possible that it could be argued that this results in an adult being deprived of their liberty. However, this will be in accordance with a procedure prescribed by law and the adult will be able to bring judicial proceedings to challenge this. In fact, most are likely already to have a guardianship application in process.
- 7.1.3.9 Article 8 of the European Convention on Human Rights (right to respect for private and family life) may also be engaged here in that Local Authorities can provide services without involving the views of the adult, or other relevant party including any guardian, welfare attorney or intervener. However, the Scottish Government is satisfied that this interference would be legitimate, proportionate and justified in that the services would be provided more quickly to protect the health, rights and freedoms of the adult.

Paragraphs 11(2) and 11(3)

- 7.1.3.10 The main factors which were taken into consideration in the assessment of continued necessity included the availability of resources, including the courts and relevant health professionals. At the end of the reporting period, the courts were only considering urgent interim guardianship cases. Although the courts advise that a return to business as usual may not be viable in the near future, as of 1 May 2020, the sheriff courts have been dealing with adults with incapacity applications where the court is satisfied that there is good reason why the action should be restarted and that the action can be progressed remotely without recourse to a hearing which requires the leading of evidence. This has been set out in guidance which was published by the Scottish Courts and Tribunals Service²¹.
- 7.1.3.11 The courts have prioritised their work due to a lack of staff, and cases requiring a hearing have been pushed back in some cases. If these provisions were not in place, it is likely that the cases would have required a

²¹ Scottish Courts and Tribunals Service guidance - <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/coronavirus-guidance---progressing-certain-categories-of-civil-business-29-04-20.pdf?sfvrsn=2>

renewal application to court, which would have increased the risk of additional pressure on the court, or that guardianship would have expired, which would have required a new application to be completed. In relation to certificates authorising medical treatment, these are, in the main, completed by the medical practitioner primarily responsible for the treatment of the adult and therefore the extension of the time limit takes the pressure off their valuable time whilst the provisions are in force. The Mental Welfare Commission requested that these provisions were added into emergency legislation and they will be one of the stakeholders that the Scottish Government consults with in considering whether the provisions continue to be necessary.

- 7.1.3.12 It is possible that some of the guardianships, and the certificates to authorise medical treatment under section 47 of the Adults with Incapacity (Scotland) Act 2000 which were due to expire within the emergency period would not have been renewed. This would be in keeping with the principle in section 1(3) of the Adults with Incapacity (Scotland) Act 2000, in that an intervention shall be the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention. Under these amendments, they will continue for the period the emergency provisions are switched on. However, it is expected that guardians and those health professionals who have authorised medical treatment (mainly doctors), will adhere to the principles of the Adults with Incapacity (Scotland) Act 2000, and respect the adult's human rights.

7.1.4 Section 5 and schedule 4, part 4 - Extension of time limits

Description of Provision

- 7.1.4.1 The provision suspends certain time limits contained in the Criminal Procedure (Scotland) Act 1995.
- 7.1.4.2 The provisions have the effect of increasing the maximum time period that an accused person can be held on remand prior to trial, together with other time limits for progressing a criminal case including the maximum wait prior to trial where the accused is not in custody. This has an impact on the rights guaranteed by Articles 5(3) and 6(1) of the of the European Convention on Human Rights. However, the Scottish Government does not consider that these increases are incompatible with the right guaranteed by Articles 5(3) and 6(1) to a trial within a reasonable time. The increases are necessary to address the disruption to the justice system that is already being caused by the coronavirus outbreak.
- 7.1.4.3 In any individual case, where an accused is brought before the court for a custody hearing, in determining whether to grant bail, the court requires to consider the accused's Article 5 and 6 rights in deciding whether it is appropriate to grant bail. Furthermore, an accused person can, at any time, apply to the court for a bail review under section 30 of the Criminal Procedure (Scotland) Act 1995 to enable the court to determine whether their continued detention is justified. The courts remain subject to the

requirement to ensure that there is a fair and public hearing within a reasonable time.

Operation of Provision in Reporting Period

- 7.1.4.4 The time limits to which the provision applies are: those under section 65 of the Criminal Procedure (Scotland) Act 1995 which sets various time limits in respect of trials under solemn procedure; section 136, which requires that proceedings in summary cases must commence within six months of the alleged offence; section 147, which makes provision for summary procedure in cases where the accused has been held on remand; and section 52T, which applies the custody time limits in sections 65 and 147, where the accused is detained in hospital because of an assessment order or a treatment order. The provision applies automatically in respect of any criminal case where one of those time limits was in effect on the date when the Act was commenced, or began after the Act commenced.

Factors Considered to Determine Use and Continued Necessity

- 7.1.4.5 At the end of the reporting period, no jury trials were taking place in Scotland, largely due to difficulties faced in applying social distancing measures. There has also been a significant reduction in summary court business. While court business is affected by coronavirus, these provisions will continue to be required.
- 7.1.4.6 Justice Analytical Services is working with the Scottish Courts and Tribunals Service to collect data to monitor the backlog of cases in the courts, which will assist in assessing the continuing need for this extension of time limits.
- 7.1.4.7 The Justice Board, supported by the Scottish Government's Justice Analytical Services, is monitoring closely the impact of coronavirus on criminal, civil and tribunal business, and how the utilisation of these provisions as part of the overall system response is impacting on the ability to restart and manage business.

7.1.5 Section 5 and schedule 4, part 8 - Release of prisoners

Description of Provision

- 7.1.5.1 The provision allows that the Scottish Ministers may, by regulations, provide that a person who falls within a class of persons specified in the regulations is to be released from prison early.

Operation of Provision in Reporting Period

- 7.1.5.2 The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/138)²² and the Criminal Justice (Miscellaneous Temporary

²² The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020
<https://www.legislation.gov.uk/ssi/2020/138/contents/made>

Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/137)²³ were made by Scottish Ministers and came into force on 4 May 2020. Scottish Ministers were satisfied that the release of prisoners under the regulations was a necessary and proportionate response to the effects coronavirus is having, and is likely to have, on prisons generally, for the purpose of protecting the security and good order of prisons and the health, safety and welfare of prisoners and those working in prisons.

- 7.1.5.3 The Scottish Government engaged with a range of different partners prior to commencement of the provisions including: the Convention of Scottish Local Authorities (COSLA), SOLACE, the Association of Local Authority Chief Housing Officers, Social Work Scotland and relevant third sector organisations, in relation to the prisoner release measures and the potential impact it would have on community based services. Letters providing further information on the prisoner release measures were sent to a broad range of stakeholders (including: all Health Boards, Integration Joint Boards, Local Authorities, Police Scotland, and the Department for Work and Pensions) to ensure that they were kept updated on the relevant policy developments and could prepare accordingly for the release measures coming into force.
- 7.1.5.4 To inform the detail of the regulations (i.e. how the release of prisoners should be configured), the Scottish Government worked with the Scottish Prison Service to understand whether the primary legislative provisions needed to be used and, subsequently, to ensure that the regulations fulfilled the Scottish Prison Service's operational needs (to the extent that they complied with the relevant legislative requirements). The legislative requirements are that Scottish Ministers may make regulations only if they are satisfied that the making of the regulations is necessary and proportionate, in response to the effects coronavirus is having or is likely to have on a prison or prisons generally, for the purpose of protecting: the security and good order of any prison to which the regulations relate, or the health, safety or welfare of prisoners, or those working, in any such prison.
- 7.1.5.5 The powers have been used to make regulations which provided for a limited number of short-term sentenced prisoners to be considered for release on or after 4 May 2020. Eligibility for release is limited to (amongst other things) those who are sentenced to 18 months or less and who, on 4 May 2020, had 90 days or less left of their time in custody.
- 7.1.5.6 It was agreed that the prisoner releases brought forward would be phased over three distinct phases (the initial two weeks from commencement of the regulations on 4 May 2020, the following week, and the week after that). This meant that from 4 May 2020:

²³ The Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 <http://www.legislation.gov.uk/ssi/2020/137/contents/made>

- prisoners with 1-30 days until their release at the halfway stage of their sentence (the earliest date of liberation) were released no later than 18 May 2020;
- prisoners with 31-60 days remaining until their earliest date of liberation were released no earlier than 19 May 2020 and no later than 25 May 2020; and
- prisoners with 61-90 days remaining until their earliest date of liberation were released no earlier than 26 May 2020 and no later than 1 June 2020.

7.1.5.7 By the completion of the process on 1 June 2020:

- 348 of the 445 considered had been released early;
- a further 27 eligible individuals from that group had been released at their 'earliest date of liberation' and 7 had requested a release on Home Detention Curfew instead;
- 63 eligible individuals had been vetoed by Prison Governors; and
- None had been held back on health grounds.

Factors Considered to Determine Use and Continued Necessity

7.1.5.8 Although there has been some reduction in the prison population since the introduction of this power, prisons have also had to take steps to end visits and reduce time out of cell. A significant number of prison staff cannot work, due to ill health, a requirement to isolate, or as a result of a need to take care of children and family members. Taken together with the changes to prison regimes, these factors make prisons an especially challenging environment at present for prisoners, prison officers, NHS staff and others who work in prisons.

7.1.5.9 The Scottish Government and Scottish Prison Service have held detailed discussions over the current and potential future impact that coronavirus may have on the operation of prisons, including the effect on staffing, and the conditions for prisoners. After careful assessment of the capacity of the prison estate, the additional flexibility required to properly respond to health concerns, and the necessary staffing levels to maintain safe and effective operations - it was agreed with the Chief Executive of the Scottish Prison Service, that releasing around 300 to 450 short-sentence prisoners would provide a significant improvement to operating conditions – whilst still being proportionate to the current situation.

7.1.5.10 The Scottish Government is engaging with the Scottish Prison Service on a regular basis in relation to the use of these powers and their impact. The Scottish Government is also regularly liaising with stakeholders who are most impacted by the prisoner release measures. The Scottish Prison Service monitors the number of prisoners that are released and which

prisons they have been released from. The statistics on the release process are published on the Scottish Prison Service website²⁴.

- 7.1.5.11 The associated prisoner release regulations are time limited and they only allow prisoners to be released over a 28 day period. The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/138) were made under the expedited procedure, but were subsequently recommended for approval by the COVID-19 Committee on 21 May 2020. The Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/137) were made under the negative procedure and the COVID-19 Committee was content not to make any recommendation to the Scottish Parliament on this SSI.
- 7.1.5.12 The Scottish Government expects that the proposed release process will achieve the intended and necessary reduction in the prison population. However, if circumstances were to change and the prison population were to increase significantly in future, it might be necessary to review this position. The Scottish Government must keep in mind that this action is being made to ensure safety and good order within prisons, and to protect the health of prison staff and prisoners. Any decisions on future release of additional prisoners would be made with regard to the legislative requirements contained in the Scottish Act, and through very careful assessment in partnership with the Scottish Prison Service.
- 7.1.5.13 With the assistance of Justice Analytical Services, an Equality Impact Assessment (separate to the one completed at the Bill stages of the Scottish Act) was completed to assess the impact of the prisoner release measures on each of the protected characteristics as defined in equality legislation.

7.1.6 Section 7 and schedule 6, part 2 – Freedom of Information

Description of Provision

- 7.1.6.1 Prior to the repeal of the provisions mentioned below, the provisions extended the statutory deadlines under the Freedom of Information (Scotland) Act 2002 (FOISA) for responding to Freedom of Information (FOI) requests and reviews by an additional 40 working days; gave the Scottish Ministers the power, by direction, to specify circumstances where a Scottish public authority could extend that deadline; gave the Commissioner discretion to decide that, where failure to comply with a deadline was due to the effect of coronavirus, an authority had not failed to comply; and allowed the Commissioner to issue notices by electronic means.

²⁴ Scottish Prison Service website <https://www.sps.gov.uk/Corporate/Information/covid19/covid-19-information-hub.aspx>

Operation of Provision in Reporting Period

- 7.1.6.2 Paragraphs 3 and 4 of schedule 6 extended the deadlines for responding to FOI requests and reviews by an additional 40 working days. The extension applied to both new requests and those outstanding when the Scottish Act came into force, but the requirement within FOISA “to comply promptly” with requests was otherwise unchanged.
- 7.1.6.3 The power of Scottish Ministers, as conferred by paragraph 5 of schedule 6, was not used during the reporting period (and has now been repealed).
- 7.1.6.4 Where an appeal is made to the Commissioner in respect of a failure to comply with a relevant deadline, paragraph 6 of schedule 6 gives the Commissioner discretion to decide that, where that is due to the effect of coronavirus or (as amended in the second Scottish Act) resulted from the repeal of the extension provisions at paragraphs 3 and 4, a Scottish public authority has not failed to comply. The Commissioner’s office has been closed during the outbreak and appeals have been suspended (though may restart soon). Information will be held by the Commissioner.
- 7.1.6.5 Paragraph 7 of schedule 6 allows the Commissioner to issue notices by electronic means. Information in respect of the use of this element of the provision will be held by the Commissioner.

Factors Considered to Determine Use and Continued Necessity

- 7.1.6.6 The powers under paragraphs 3, 4 and 5 of schedule 6 were repealed by the second Scottish Act.
- 7.1.6.7 The powers at paragraphs 6 and 7 of schedule 6 are conferred on the Commissioner.
- 7.1.6.8 While the rate of coronavirus infection has reduced, physical distancing measures remain in place and Scotland’s route map does not anticipate non-essential indoor office spaces opening until phase three. As a result, Scottish public authorities will continue to experience significant disruption that may impact on their ability to respond to FOI requests for some time, so the power at paragraph 6, conferring discretion on the Commissioner, remains necessary.
- 7.1.6.9 The Commissioner’s office is likely to remain closed for some time, so the power at paragraph 7, to issue notices electronically, remains necessary to reduce disruption to its statutory functions.

7.1.7 Section 8 and schedule 7, paragraphs 1 to 5 - Social security

Description of Provision

- 7.1.7.1 These provisions relax timescales which apply to clients seeking (and Social Security Scotland making) a redetermination, and clients bringing an

appeal before the First-tier Tribunal for Scotland, where normal timescales cannot be met for reasons related to coronavirus. Other provisions modify timescales for making applications where these have not been able to be met directly as a result of coronavirus.

Operation of Provision in Reporting Period

- 7.1.7.2 The provisions have been commenced. External guidance for members of the public is available via the Agency's website²⁵ and at www.mygov.scot/benefits/. Social Security Scotland, in consultation with policy colleagues, has also developed guidance for staff on the practical implementation of the provisions. If a client cites disruption caused by coronavirus as the reason for a late application or late request for an appeal or redetermination, Social Security Scotland will use the powers to allow the late application or request to be considered.

Factors Considered to Determine Use and Continued Necessity

- 7.1.7.3 The key factor in the continuing necessity of the provisions is the continued disruption created by coronavirus. Where this is likely to have an impact on people's ability to make applications for benefits in timely fashion or make a request for a redetermination or appeal, including to gather and receive supporting information, or where it could have an impact on the timing of their award of a qualifying benefit, there will be a need for these provisions. Similarly, where the continued disruption created by coronavirus impacts on Social Security Scotland's ability to process redeterminations, or on clients' ability to gather information requested in support of their redetermination, the extended timelines for redetermination should remain in place. The Agency is however required to make the redetermination as soon as reasonably practicable within the extended redetermination period; this provides a safeguard to ensure that clients' rights to receive a decision as quickly as possible and subsequently appeal rights to the First-tier Tribunal, are respected. There are currently no new or specific arrangements in place for reviewing the impact of the implementation of these provisions. These provisions amend the Social Security (Scotland) Act 2018 and the impact assessments that are in place for that Act are relevant. Ongoing monitoring arrangements will include monitoring the impact of the changes brought about by these provisions and, if changes are identified, the impact assessments will be reviewed and updated.

²⁵ Social Security Scotland website <https://www.socialsecurity.gov.scot/>

7.2 UK Act

7.2.1 Section 10 and schedule 9 - Temporary modification of mental health legislation

Description of Provision

7.2.1.1 The provision makes temporary changes to mental health legislation and it aims to ensure that people can continue to be treated and cared for in a way which both respects their rights and maintains safeguards. These temporary changes will continue to be compliant with human rights obligations.

Factors Considered to Determine Use and Continued Necessity

7.2.1.2 The provisions have not yet commenced.

7.2.1.3 Mental health legislation in Scotland provides for rigorous safeguards in respect of individuals' human rights which include that any function should be carried out for the maximum benefit of the patient, with the minimum necessary restriction on the freedom of the patient. During the passage of the Bill, Ministers were clear that these temporary changes would be brought in only when absolutely necessary.

7.2.1.4 The temporary provisions aim to provide some flexibility to enable services to cope with significant staff shortages whilst maintaining appropriate safeguards for patients and to help support the continued safe running of compulsory care and treatment services under mental health legislation.

7.2.1.5 In order for Scottish Ministers to take a view on appropriate and timely commencement of the mental health provisions, the Scottish Government has been clear that there is an ongoing need to collate and review a range of evidence including NHS workforce information showing the overall and coronavirus-related staff absence rate across NHS Boards. In addition, the Scottish Government has sought intelligence from key stakeholders and it is working closely with practitioners, such as the Mental Welfare Commission, the Mental Health Tribunal for Scotland, the Royal College of Psychiatrists and Social Work Scotland. The Mental Welfare Commission has a statutory duty to monitor the use of the Scottish Government's mental health legislation and it will ensure that the data continues to be collected. Also, through its oversight group, the Mental Welfare Commission will be in a position to scrutinise the use of these emergency powers, if commenced.

7.2.1.6 The current information indicates that workload pressures are not at a stage where they are impacting on the operation of mental health legislation and there is no new compelling evidence to suggest the need to commence these new temporary measures.

7.2.1.7 While at this time, the assessment is that the powers under schedule 9 do not require to be commenced, the provision remains necessary overall.

7.2.1.8 The Scottish Government will continue to engage with stakeholders in order to gather, analyse and review all available data and evidence. This will be used to inform and shape future advice to Scottish Ministers regarding commencement of these new temporary measures.

7.2.2 Sections 16 and 17 - Duty of Local Authority to assess needs: Scotland, and section 16: further provision

Description of Provision

7.2.2.1 The provisions allow for relaxation of some requirements relating to social work needs assessments.

Operation of Provision in Reporting Period

7.2.2.2 Sections 16 and 17 of the UK Act allow Local Authorities to dispense with particular social care assessment duties where: 'it would either not be practical to comply, or where to do so would cause unnecessary delay in providing services, support, advice, guidance and assistance'. The provision covers social care for adults and children and support for carers. It is intended to allow Local Authorities to provide urgent care without delay.

7.2.2.3 The provisions allow Local Authorities the flexibility to focus on prioritising the most urgent need and protecting the lives of those who are most vulnerable while ensuring effective safeguards. Local Authorities are still expected to do as much as they can to meet people's needs. While the provisions soften assessment duties, the main duties on authorities under section 12 of the Social Work (Scotland) Act 1968 remain in place.

7.2.2.4 Scottish Ministers made the Coronavirus Act 2020 (Commencement No. 1) (Scotland) Regulations 2020 (SSI 2020/121)²⁶, which came into force on 5 April 2020. Statutory guidance²⁷ on these powers was issued on 3 April 2020, and the Deputy First Minister and Cabinet Secretary for Health and Sport wrote jointly to key stakeholders ahead of commencement on 5 April 2020. These communications made clear that the power to disregard assessment duties would remain in operation only while absolutely necessary to protect people.

7.2.2.5 Under section 17(2)(B) of the UK Act, Scottish Ministers can direct Local Authorities to comply with any guidance which is issued under section 17(1). It is intended that this power will only be used if it is considered that the guidance requires the weight of direction, and it will not be necessary to make the direction if Local Authorities demonstrate that they are exercising

²⁶ Coronavirus Act 2020 (Commencement No. 1) (Scotland) Regulations 2020 - <https://www.legislation.gov.uk/ssi/2020/121/made>

²⁷ Social care assessment guidance - <https://www.gov.scot/publications/coronavirus-covid-19-changes-social-care-assessments/>

their functions accordingly. As such, this direction making power has not been used in the reporting period.

- 7.2.2.6 Following liaison with COSLA and Social Work Scotland, a survey was issued to Chief Social Work Officers to identify use of the powers over the period from commencement of the above regulations on 5 April 2020 until 16 May 2020. Responses were received from 26 Local Authorities/Health and Social Care Partnership areas. Of these, five partnership areas comprising six Local Authorities said they were using the powers. Some are using the powers across the whole authority area and all services, while others are using the powers in a more targeted way, for example, on particular services only. Some of the reasons for the use of the powers included: to support quick access to services where face to face assessment cannot take place, to allow staff to support frontline duties and reduce bureaucracy, and to avoid delays in the provision of care.
- 7.2.2.7 All those Local Authorities/Health and Social Care Partnerships that used the powers thought the powers were helpful in managing their response to coronavirus. Some respondents noted a potential increase in demand following the transition from lockdown which may affect their likelihood to wish to use the powers.

Factors Considered to Determine Use and Continued Necessity

- 7.2.2.8 The statutory guidance referred to above, provides a reference point and framework for Local Authorities, if they choose to implement the provisions. The statutory guidance which is referred to above states: *“all assessments other than full should be regarded as temporary. These should be reviewed as well as possible at regular intervals”*.
- 7.2.2.9 The guidance sets out that Local Authorities are responsible for ensuring that the powers are only used for as long as is necessary. When using these provisions, all decisions made on an individual’s social care needs should be considered alongside their individual wellbeing and fundamental human rights.
- 7.2.2.10 Most Local Authorities have decided that it is not operationally necessary for them to use these powers. This may suggest that Local Authorities are carefully considering use of the powers and seeking to use them only where appropriate and necessary, subject to their governance processes. While significant progress is being made, the future path of the virus, and levels of demand for assessments and impact on social work professionals is hard to fully predict. It is therefore appropriate at this time to maintain the flexibility for Local Authorities to use these powers. This will be subject to further monitoring and review.

7.2.3 Sections 34 and 35 - Temporary disapplication of disclosure offences: Scotland and Power to reclassify certain disclosure requests: Scotland

Description of Provision

- 7.2.3.1 The provisions give Scottish Ministers the power to issue a direction that disapplies or modifies the offences under section 35 (organisations not to use barred individuals for regulated work) and section 36 (personnel suppliers not to supply barred individuals for regulated work) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”).

Factors Considered to Determine Use and Continued Necessity

- 7.2.3.2 This power has not been used in this reporting period. The use of these provisions is directly linked to the ability of Disclosure Scotland to continue to provide a service to those critical workers requiring PVG scheme membership. This provision is to ensure that employers who employ someone who is barred from regulatory work is not criminalised due to the inability of Disclosure Scotland to provide this check in a timely manner.
- 7.2.3.3 Disclosure Scotland’s Leadership Team monitors the number of applications received on a daily basis, and the length of time that it is taking to process and issue disclosures. Throughout the reporting period, the vast majority of disclosures have been issued within one week of the application being received. Disclosure Scotland’s Leadership Team also monitors staff absences daily, and these have not been at a level to impact adversely on the processing and issuing of disclosures. Scottish Ministers will make the decision to invoke this contingency if monitoring shows that there is a material risk of Disclosure Scotland being unable to continue to provide a service to critical workers requiring PVG scheme membership.
- 7.2.3.4 While at this time, the assessment is that the powers under sections 34 and 35 do not require to be used, the provision remains necessary overall as a contingency to ensure continuity of service.

7.2.4 Section 37 and part 2 of schedule 16 and section 38 and part 2 of schedule 17 - Temporary closure of educational institutions and childcare premises, and Temporary continuity: education, training and childcare

Description of Provision

- 7.2.4.1 The provisions provide Scottish Ministers with powers to close educational establishments, disapply or disregard specific legislation and to require educational establishments to open either partially or fully.

Operation of Provision in Reporting Period

- 7.2.4.2 The powers under section 37 and part 2 of schedule 16 have not been used in the reporting period.

- 7.2.4.3 The powers under section 38 and part two of schedule 17 have been used in the reporting period. Scottish Ministers exercised their powers conferred by section 38(2) and paragraph 11(1) of schedule 17 of the UK Act, to give an Educational Continuity Direction²⁸ to Education Authorities which came into force on 21 May 2020. As required by the legislation, Scottish Ministers had regard to advice relating to coronavirus from the Chief Medical Officer ahead of the Educational Continuity Direction being issued.
- 7.2.4.4 The direction supports and provides a legal basis for key measures of the Strategic Framework for Reopening of Schools and Early Learning and Childcare Provision²⁹ as published by the Education Recovery Group. For example, it includes requirements on planning and preparing for return to school when it is safe to do so, remote learning, provision for keyworkers' children and vulnerable children, and restricting access to school buildings except for these purposes. It also provides that failures to comply with a number of statutory duties on education authorities are to be disregarded, to the extent they are attributable to the direction.
- 7.2.4.5 The Educational Continuity Direction also applies to early learning and childcare and out of school care provided by Local Authorities (i.e. not private or third sector providers of early learning and childcare and out of school care). It does not apply to Further Education or Higher Education institutions.

Factors Considered to Determine Use and Continued Necessity

- 7.2.4.6 The provisions for closure directions and continuity directions remain necessary in case of any future surge in infection which may necessitate closure, and to underpin the phased re-opening of education establishments. This continuity direction is in place for 21 days from 21 May 2020. However, it will be kept under review by the Education Recovery Group, and it is expected that further directions will be made to modify or supplement it as appropriate. As required by the UK Act, this direction will be reviewed within 21 days, and the intention is to continue to do this in partnership between the Scottish Government and Local Government.
- 7.2.4.7 The Scottish Government will continue to use its close links with stakeholders to monitor the impact of the Educational Continuity Direction on those affected by it, in particular, as it is closely aligned with the work of the Education Recovery Group, this will provide a broad based overview of the effect of the direction. This work of the Education Recovery Group includes the ongoing assessment of the impact of these measures on those with protected characteristics under the Equality Act 2010, in relation to children's rights and wellbeing and any differential impact on island communities.

²⁸ Educational Continuity Direction <https://www.gov.scot/publications/coronavirus-act-2020-educational-continuity-direction/>

²⁹ Coronavirus (COVID-19): strategic framework for reopening schools, early learning and childcare provision <https://www.gov.scot/publications/excellent-equity-during-covid-19-pandemic-strategic-framework-reopening-schools-early-learning-childcare-provision-scotland/>

7.2.5 Section 49 and schedule 19 - Health Protection Regulations: Scotland

Description of Provision

7.2.5.1 Section 49 introduces Schedule 19, which gives Scottish Ministers the powers 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.

Operation of Provision in Reporting Period

7.2.5.2 Section 49 commenced on Royal Assent and schedule 19 came into force on 25 March 2020. The powers have been used to make several sets of regulations to provide for the “lockdown”. The chronology of this, and related guidance, is as follows:

- **25 March 2020:** The UK Act receives Royal Assent and section 49 and schedule 19 of the Act (the enabling powers for the regulations) come into force. Coronavirus (COVID-19): Business and Social Distancing Guidance³⁰ is also published.
- **26 March 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020/103)³¹ are made and come into force.
- **27 March 2020:** Physical Distancing Guidance Staying at Home and Away from Others³² is published.
- **1 April 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations 2020 (SSI 2020/106)³³ are made and come into force. These regulations make minor amendments to regulations 4 and 7 of the original regulations to amend cross referencing errors.
- **16 April 2020:** The regulations are reviewed. The Cabinet Secretary for Constitution, Europe and External Affairs wrote to inform the Scottish Parliament of this.

³⁰ Working Safely During Coronavirus Guidance- <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

³¹ The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 <https://www.legislation.gov.uk/ssi/2020/103/contents/made>

³² Physical Distancing Guidance Staying at Home and Away from Others - <https://www.gov.scot/publications/coronavirus-covid-19-staying-at-home-and-away-from-others/pages/staying-at-home/>

³³ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations 2020 <https://www.legislation.gov.uk/ssi/2020/106/contents/made>

- **21 April 2020:** The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 2) Regulations 2020 (SSI 2020/126)³⁴ are made and come into force. These regulations strengthen the position already set out in guidance by making it a legal requirement that all businesses that are open during the emergency period must take reasonable steps to ensure that their employees are able to maintain social distancing. They also make minor extensions and clarifications to the regulations in relation to livestock markets, holiday accommodation services and burial grounds.
- **7 May 2020:** The regulations are reviewed.
- **11 May 2020:** The Physical Distancing Guidance which is referred to above is updated to reflect that people are advised they can exercise as often as they wish. Scottish Ministers made this change following scientific advice and using the COVID-19 Decision-Making Framework³⁵. This change will be monitored carefully and reviewed in order to assess the effects on physical distancing and infection spread.
- **28 May 2020:** The principal regulations are reviewed and the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/164)³⁶ are made. These regulations provide that people may take part in outdoor recreation with members of their household and with members of one other household. They allow garden centres to reopen and provide that it is a reasonable excuse to leave your home to obtain supplies from garden centres (or any other business or service listed in part 3 of schedule 1) or to access waste/recycling services. The regulations provide for the reopening of outdoor tennis courts and bowling greens. They allow businesses and service providers, currently closed to the public under the regulations, to begin preparing social distancing procedures in readiness for when they are allowed to reopen. The regulations came into force on 29 May 2020.

7.2.5.3 Also on 28 May 2020, Physical Distancing Guidance Staying at Home and Away from Others is updated to reflect that people may take part in outdoor recreation alone or with members of their household and/or members of one other household at a time, while emphasising the importance of physical distancing, hand hygiene and other precautions when meeting. The revised guidance strongly recommends not travelling beyond a person's local area for outdoor recreation (and advises a five mile limit to travel). It also provides a non-exhaustive list of non-contact leisure activities that people from up to two households can engage in, such as golf and bowls.

³⁴ The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 2) Regulations 2020 <http://www.legislation.gov.uk/ssi/2020/126/made>

³⁵ Coronavirus: framework for decision making - <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making/>

³⁶ Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020 - <http://www.legislation.gov.uk/ssi/2020/164/contents/made>

- 7.2.5.4 Police Scotland is publishing weekly updates on the use of coronavirus legislation, including Fixed Penalty Notices (FPNs) issued and other intervention activity³⁷. This information is drawn from Police Scotland's 'Coronavirus Interventions' application, which relies on manual input from Police Officers. Due to this manual input, these figures are indicative only and should not be considered Official Police Statistics. This system currently provides the broadest picture of the differing levels of co-operation experienced by Police across Scotland.
- 7.2.5.5 In due course and as standard practice, the Official Statistics produced by the Scottish Government on Recorded Crime³⁸ and Criminal Proceedings³⁹ will ultimately provide users with information on both the number of crimes recorded in relation to the new powers, and the number of FPNs issued. Further updates on developments with these Official Statistics can be received by signing up to the SCOTSTAT network⁴⁰.
- 7.2.5.6 A Local Authority can also use enforcement powers in relation to the parts of the regulations (regulations 3 and 4 of the principal regulations) that relate to restrictions on businesses.
- 7.2.5.7 To ensure a co-ordinated approach to coronavirus was taken nationally, the Environmental Health/Trading Standards COVID-19 Expert Group was formed by the Society of Chief Officers of Environmental Health of Scotland and the Society of Chief Officers of Trading Standards in Scotland in conjunction with COSLA. Both Environmental Health and Trading Standards staff have been designated as authorised officers by Local Authorities to enforce the relevant requirements of The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020/103), as amended.
- 7.2.5.8 Each Local Authority is publishing information about enforcement activity undertaken in relation to the regulations on the respective Authority's website. This information is currently published every two weeks.

Factors Considered to Determine Use and Continued Necessity

- 7.2.5.9 Prior to the regulations being made, confirmation was sought from the Chief Medical Officer that the measures set out in the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 were required due to the serious and imminent threat to public health posed by the incidence and spread of the coronavirus.

³⁷ Police Scotland weekly updates on the use of the coronavirus legislation - <https://www.scotland.police.uk/about-us/covid-19-policescotlandresponse/enforcement-and-response-data>

³⁸ Recorded Crime in Scotland, 2018-19 National Statistics - <https://www.gov.scot/publications/recorded-crime-scotland-2018-19/>

³⁹ Criminal Proceedings in Scotland, 2018-19 National Statistics - <https://www.gov.scot/publications/criminal-proceedings-scotland-2018-19/>

⁴⁰ SCOTSTAT network for users and providers of Scottish Official Statistics - <https://www2.gov.scot/Topics/Statistics/scotstat>

7.2.5.10 Scottish Ministers also had to ensure that the restrictions and requirements that they imposed were proportionate to what is sought to be achieved by the imposition of the regulations. Advice that the regulations should continue to remain in force was sought, and provided, ahead of each review of the regulations. This was provided by a range of analytical and health teams across the Scottish Government. Advice on the impact on public health of any changes to the regulations to relax the measures was sought before each change was implemented in the regulations.

7.2.5.11 The necessity of the restrictions and requirements imposed by the regulations must be reviewed at least every 21 days, and measures must be terminated as soon as they are no longer required.

7.2.5.12 In practice, this means that at least every 21 days, the full range of measures are formally reviewed based on whether they are needed on public health grounds, and the results of the review are communicated to the Scottish Parliament. In between these formal reviews, the individual measures are kept under continuous review and changes are assessed based on public health grounds and the threat to public health that is posed by coronavirus and whether the restrictions and prohibitions imposed by the regulations remain proportionate to what the regulations seek to achieve. Where measures can be eased, they are being eased as soon as the evidence suggests this. These changes are being announced by the Scottish Government, and announced to the Scottish Parliament, as and when they are made.

7.2.5.13 Throughout the development of the regulations and guidance, the Scottish Government has always had regard to equality considerations and the particular needs of island communities as part of the policy development process. Ministers were clear that the regulations and the restrictions and requirements that they impose were necessary.

7.2.5.14 Whilst these measures were brought in to deal with a significant threat to public health, impact assessment will be carried out as required on these measures. Any proposed changes to the measures are being assessed for their impact on equality and other areas as part of the policy development. This will be reported to the Scottish Parliament in appropriate impact assessments supporting any further amending regulations.

7.2.6 Section 51 and part 3 of schedule 21 - Powers relating to potentially infectious persons

Description of Provision

7.2.6.1 Section 51 introduces schedule 21 which sets out powers which can be exercised by public health officers, constables and immigration officers in respect of persons where there are reasonable grounds to suspect that they are “potentially infectious”.

Operation of Provision in Reporting Period

7.2.6.2 A declaration of a serious and imminent threat to public health⁴¹ was made on 25 March 2020 under schedule 21, and a further clarificatory declaration⁴² was made on 30 March 2020. Although the Schedule 21 powers have been “switched on” via this declaration made by Scottish Ministers, they have not been used in the reporting period. The views and agreement of the Chief Medical Officer were formally sought and secured prior to the issuing of the declaration to switch on the Schedule 21 powers.

Factors Considered to Determine Use and Continued Necessity

7.2.6.3 The schedule 21 potentially infectious persons powers continue to be required as they may be needed to support any future strategies to disrupt transmission of coronavirus.

7.2.7 Section 52 and part 3 of schedule 22 - Powers to issue directions in relation to events, gatherings and premises

Description of Provision

7.2.7.1 Section 52 introduces schedule 22 which gives the Scottish Ministers direction-making powers in relation to events, gatherings and premises.

Operation of Provision in Reporting Period

7.2.7.2 A declaration of serious and imminent threat to public health⁴³ was made on 25 March 2020 under schedule 22. This had the effect of starting a “public health response period” and switching on the schedule 22 powers (with a further clarificatory declaration⁴⁴ made on 30 March 2020).

7.2.7.3 The views and agreement of the Chief Medical Officer were formally sought and secured prior to the issuing of the declaration to switch on the Schedule 22 powers.

7.2.7.4 Although the schedule 22 powers have been “switched on” via the declaration made by Scottish Ministers, they have not yet been used to make directions relating to events, gatherings and premises. Provision in

⁴¹Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health: <https://www.gov.scot/publications/covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health/>

⁴² Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health (supplementary): <https://www.gov.scot/publications/coronavirus-covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health-supplementary/>

⁴³Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health: <https://www.gov.scot/publications/covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health/>

⁴⁴ Coronavirus (COVID-19): Declaration of a serious and imminent threat to public health (supplementary): <https://www.gov.scot/publications/coronavirus-covid-19-declaration-of-a-serious-and-imminent-threat-to-public-health-supplementary/>

that regard has instead been made to date by regulations made under schedule 19 which have closed certain businesses, prohibited anyone leaving the place where they live without reasonable excuse, and banned public gatherings of more than two people.

Factors Considered to Determine Use and Continued Necessity

- 7.2.7.5 As the requirement for the schedule 19 regulations is kept under review, based on public health grounds, so too is the ongoing requirement for the schedule 22 powers and when they might be invoked. Whilst no directions have been made under schedule 22 yet, the powers remain necessary and could be used to take fast targeted action beyond the scope of the regulations if it appeared necessary, proportionate and justified in the circumstances. As part of exiting lockdown, the powers may be necessary to allow Scottish Ministers to take more targeted action in local areas.



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