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By email

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Dear Murdo

CORONAVIRUS (SCOTLAND)(NO. 2) BILL – STAGE 1 CONSIDERATION

Thank you again for the opportunity to give evidence before the Covid-19 Committee on 12 May, and thank you also to the Committee for its consideration of the Bill and the letter of 13 May setting out its views at Stage 1. The Committee's recommendation that the Parliament should support the general principles of the Bill was very welcome.

Purpose and reporting

I note the DPLRC's recommendation that there should be a review and report to the Scottish Parliament by the Scottish Government on all subordinate legislation made in response to the Coronavirus emergency, as if it were made under provisions of the Scottish Coronavirus Act or this Bill. I also note the Covid-19 Committee's recommendation that post-legislative scrutiny of the coronavirus legislation is carried out at an appropriate time following the end of the emergency situation.

As the Committee will be aware, an amendment relating to reports by the Scottish Ministers on coronavirus subordinate legislation has been lodged at Stage 2 and will be considered tomorrow.

I wrote to the Presiding Officer earlier today setting out more information on the Government's overall approach to reporting and a copy of that letter was sent to the Conveners of both Committees. In the letter I noted that the Government is giving consideration to the point which has been raised by the Committee and to how that might best be achieved, recognising that it will of course be necessary to make sure that our reporting approach is proportionate, sustainable and fits within the established legislative timetable.

I noted that I would respond to the Committee more fully in due course and that I also expected that reporting on subordinate legislation will be a matter of discussion as the Bill enters Stage 2.

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Student residential tenancy

In relation to the first point raised by the Law Society of Scotland, I would advise the Committee that the termination of student leases is subject to the general law relating to attorneys, guardians, interveners etc. Therefore, the Scottish Government's view is that there is no need to specifically provide that it applies. It is not, for example, specified in the Private Housing (Tenancies)(Scotland) Act 2016 legislation, which the Scottish Government is aiming to bring student lease termination into line with.

On the Law Society's second point, the Scottish Government's view is that "reason relating to coronavirus" could include a mental health condition, but do not think it needs to be specifically mentioned. The intention is that "reason relating to coronavirus" will include any reason attributable to the pandemic, so it is not necessary to specify specific reasons. It is the Government's view that including specific reasons would risk the implication that reasons not specifically mentioned are excluded, which we wish to avoid.

However, as the Committee will be aware, amendments related to the student residential tenancy provision have been lodged and the Government is considering these in advance of tomorrow's Stage 2 consideration of the Bill.

Bankruptcy

The Committee sought clarification on the basis on which the Scottish Government arrived at revised figures for bankruptcy proceedings in the Bill and whether the bankruptcy provisions might be extended beyond the duration of the emergency legislation.

With regard to the level for creditor petitions, it is clear that the current level - £3,000 – has seen its real value diminish since it was set in 2007. In response to the Scottish Government's consultation launched last November, 86% of those who agreed the limit should be increased opted for £5,000, effectively restoring that real value: and the current level in England and Wales. In the Bill on introduction, the Scottish Government proposed doubling that due to current circumstances. As the policy memorandum makes clear, there is an element in this of wanting to make sure relatively small cases are not pursued just now, not only to protect debtors, but also to enable both the courts and Accountant in Bankruptcy to focus on other priorities. As the Law Society points out – who agreed this was proportionate in the circumstances - creditors' right to take action is preserved until later times.

The level for the MAP application fee proposed at introduction represents a rough halving of the current £90 fee. It is the Scottish Government's view that even in current circumstances there remains a case for some fee – both to help meet the costs of administering the process, and to ensure that bankruptcy is not seen as an easy option taken before people reflect on the implications and their options. However, as the Committee will be aware, an amendment to this has been lodged at Stage 2 and the Government is considering this in advance of tomorrow's Stage 2 consideration of the Bill.

The existing MAP maximum debt level is £17,000. The real value of that level has eroded over time since MAP was introduced in 2015, and in response to the November consultation, 65% of respondents to the relevant question suggested it should be raised to £20,000 – largely to align with the maximum debt level for the similar product used in England and Wales.

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In response to the exceptional circumstances resulting from the coronavirus outbreak, the Scottish Government aimed to reflect those circumstances in our proposed increase. While I am aware there are many voices calling for an upper limit to be abolished completely, the Scottish Government is of the view that it remains right that – at some point – it is important that a fuller process is gone through, to allow an assessment of how an individual with no surplus income has fallen into high levels of debt, at least in part to protect wider society from fraudulent behaviour. Similarly – although the point of bankruptcy is to allow an individual a fresh start – at some level of debt, it seems appropriate for the bankruptcy to last for longer than six months, and for creditors to be able to benefit from any change in the debtor's circumstances over a rather longer period. All of these are of course matters for subjective judgement – and there is nothing particular to suggest why £25,000 is any more or less appropriate than, say, a 50% increase on the current level, which would give a limit of £25,500. But the Scottish Government is of the view that we have the balance broadly right.

The Committee asked whether there was a possibility that some of the bankruptcy provisions might be extended beyond the duration of the emergency legislation. Certainly, if the proposals turn out to be working well, there are provisions here we would want to take forward into bankruptcy legislation more permanently. That is likely to be by separate primary or secondary legislation as appropriate, brought forward to a more normal timetable, and subject to the full consultation that is an integral part of the normal legislative process. The regular reporting arrangements build into the two emergency bills will provide a good start for assessing how far stakeholders feel the elements considered here ought to be continued once the emergency period is over.

Mental Health

I thank the Committee for its acknowledgement that the provision related to mental health is a proportionate power, and note your question about monitoring the cumulative impact of the emergency Covid legislation on human rights.

As the Committee is aware, the Law Society of Scotland welcomed the commitment to human rights which was demonstrated in the Policy Memorandum to the Bill. Equality and human rights remain central to the Scottish Government's approach and directly inform the actions we are taking on behalf of the whole of Scottish society to respond to the current emergency. Careful consideration has been given to the potential human rights and equality impacts of all relevant legislation. That will also be the case as we undertake the initial phase of reporting on the Coronavirus Acts.

Extension of time limits

The Scottish Government has considered the Law Society's views on the disapplication of time limits in relation to Schedule 2, paragraphs 1(4) and 1(5) of the Criminal Procedure (Scotland) Act 1995, and would advise the Committee that in any individual case, the courts must act in accordance with the European Convention on Human Rights when determining the period for which any case should be adjourned.

The Scottish Government considers it appropriate to allow the court to determine, having regard to their knowledge of the relevant facts and circumstances, what an appropriate period of adjournment is in any given case. It is important to note that the court can always extend period of adjournment following a further hearing. There would be little value in setting a statutory maximum that could result in the courts having to adjourn a case for a period that

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they knew from the outset would be insufficient to obtain reports etc because of the impact of the coronavirus outbreak on those they are seeking information from, and would have to be extended.

These time limits only apply to remand prisoners in cases where the offender has already been convicted of an offence and they are being remanded prior to sentence or to a decision about a breach of a court-imposed order such as a community payback order or drug testing and treatment order. If a remand prisoner's circumstances change, they can at any time seek a bail review.

Additional Dwelling Supplement (ADS)

The proposal to increase from 18 to 27 months the time period in which relevant taxpayers (who paid the ADS prior to 25 March 2020 and were still within their 18 month period at that date) can sell a previous main residence and claim repayment of the ADS represents a balanced and proportionate response. This time period was intended to ensure that those who would have reclaimed the ADS under normal circumstances are still able to do so.

However, as there remains considerable uncertainty about the possible duration of the outbreak and its impacts, provisions in the Bill on introduction allowed for future legislation to be made to increase the length of the extension and, or, apply it to a broader range of transactions, if that were deemed justified in relation to the coronavirus at that time.

I note that an amendment to this provision has been lodged and will be considered by the Committee tomorrow. The Scottish Government is currently considering the detail of that proposed amendment.

Marriages and civil partnerships

The guidance relating to marriages and civil partnerships has now been published at: <https://www.nrscotland.gov.uk/about-us/service-status>. A link to this guidance was shared with all MSPs.

I can advise the Committee that 20 marriages were solemnised and registered on an emergency basis between March 26 and 13 May. No civil partnerships have been registered on an emergency basis so far during this period, although is unsurprising. Now that same sex couples can get married, there are only around 75 civil partnerships registered in Scotland per year.

UEFA European Championship

These provisions have been included as UEFA EURO 2020 has been postponed as a result of the coronavirus outbreak.

I would like to make clear to the Committee that there is no suggestion from UEFA that the Championship will be delayed beyond the proposed dates in 2021. However, I believe that it is prudent for these changes to allow for further postponement of the event into 2022, if that was necessary due to the impact of the coronavirus outbreak, rather than bringing forward a third Bill on this matter to revise the dates again. The Championship period will be specified in regulations and will last up to 42 days. The 42 day period replicates the length of the

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Championship period in the 2020 Act but provides additional flexibility to specify dates if the Championship were delayed further.

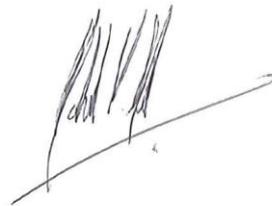
With regard to the charity auctions of match tickets, I should advise the Committee that the Scottish Government had planned to make these changes using a remedial order under the Convention Rights (Compliance) (Scotland) Act 2001 but this procedure was disrupted by the coronavirus outbreak. So there is a clear link between this change and the coronavirus outbreak.

A remedial order can only be used if the Scottish Ministers consider that there are compelling reasons for this as opposed to any other option. Previously, primary legislation was not deemed an appropriate vehicle to correct the issue, as it was the only change required in to the 2020 Act and there was considered to be insufficient Parliamentary time for another Bill prior to the event beginning in June 2020. However, in light of postponement and, in turn, the dates of Championship requiring updating, which can only be done through primary legislation, the Convention compliance issue is now more appropriately addressed through primary legislation.

The order had been shared with Parliament, key stakeholders and was published on the Scottish Government's website on 4 February 2020. No comments on the order had been received by 17 March, the date UEFA announced the Championship would be postponed. The policy in this Bill is as was contained in that order.

UEFA has announced that tickets it has already sold will remain valid for the rescheduled event. For that reason it is particularly urgent to make the changes that are required in order to be able to bring the ticket touting offence into force as swiftly as possible.

I hope this is helpful to the Committee and I look forward to discussing some of these matters and related amendments at Stage 2.



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