



The Scottish Parliament
Pàrlamaid na h-Alba

Covid-19 Committee

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(by e-mail)

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Dear Michael,

Thank you for giving evidence on the Coronavirus (Scotland) (No. 2) Bill¹ (“the Bill”) at our meeting yesterday morning and for your follow up letter. The Committee also thanks the Law Society of Scotland (“Law Society”) for also giving evidence this morning at very short notice. While the Parliament has agreed that the Bill is to be treated as an Emergency Bill, the Committee welcomes the opportunity to be able to consider the Bill at Stage 1 and Stage 2. Our views on the Bill at Stage 1 are set out below.

The purpose of the Bill, as set out in the policy memorandum,² is to respond to the emergency situation caused by the coronavirus (Covid-19) pandemic. The Bill complements and supplements the UK Coronavirus Act 2020 and the Coronavirus (Scotland) Act 2020.

To support these aims, the Bill takes the following measures:

- it makes adjustments to laws which protect individuals to ensure their effective operation during the coronavirus outbreak;
- it makes adjustments to criminal procedure, and to other aspects of the justice system, to ensure that essential justice business can continue to be disposed of throughout the coronavirus outbreak;
- it makes a range of provisions designed to ensure that business and public services can continue to operate effectively during a period where controls on

¹ <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/coronavirus-scotland-no2-bill/introduced/bill-as-introduced-coronavirus-scotland-no2-bill.pdf>

² <https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/coronavirus-scotland-no2-bill/introduced/policy-memorandum-coronavirus-scotland-no2-bill.pdf>

movements have been imposed and when pressures on public services are acute.

Purpose and reporting

The Committee asked the Cabinet Secretary why a further Coronavirus Bill is required. He replied that the Bill responds to the ongoing disruption from Coronavirus that needs to be addressed but that the Government is satisfied that all of the measures contained in the Bill are appropriate and proportionate, albeit many are far-reaching and unprecedented. The Bill contains the following safeguards:

- Part 1 of the Bill will automatically expire less than six months after it comes into force. The Scottish Parliament may extend this for two further periods of six months, giving Part 1 of the Bill a maximum duration of 18 months;
- where a provision in Part 1 of the Bill is no longer considered necessary, Scottish Ministers may bring it to an end earlier than on this six-monthly schedule; and
- Scottish Ministers are required by the Bill to report on the continued need for the measures, and on the use of powers in the Bill, every two months.

The Cabinet Secretary also stated that this Bill is likely to be the last piece of emergency primary legislation related to Coronavirus, while noting that further work is on-going in relation to jury trials³.

The Delegated Powers and Law Reform Committee (DPLRC) also considered the Bill at Stage 1 and wrote to us. It explained that most of the subordinate legislation which has been made in response to the coronavirus pandemic has not been made under powers in the Coronavirus Acts (the UK Act and the previous Scottish Act), rather it has been made under existing powers in other legislation. This means that the safeguards offered by the Coronavirus Acts do not necessarily apply. In particular:

- not all of the instruments made in response to the coronavirus pandemic will expire when the emergency provisions of the Coronavirus Acts expire.
- not all of the instruments are subject to a review or have any reporting requirements. The two-monthly review and report by Scottish Ministers to the Parliament required under section 15 of the 2020 Act (replicated in section 12 of this Bill) only applies to provisions of those Acts and instruments made under them.
- not all of the instruments are only made in connection with the current coronavirus emergency. Some also make provision which applies in relation to “an emergency” more generally.

The DPLRC suggest it would be beneficial in the interests of effective scrutiny if the Scottish Government would review and report to the Scottish Parliament on all

³ Stewart Stevenson MSP did not participate in the discussion of jury trials.

subordinate legislation made in response to the Coronavirus emergency, as if it were made under provisions of the Scottish Coronavirus Act or this Bill.

The Committee notes the recommendation of the DPLRC that the Scottish Government should review and report to the Scottish Parliament 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.

The Committee recommends that it is essential that post-legislative scrutiny of the coronavirus legislation is carried out at an appropriate time following the end of the emergency situation.

Student residential tenancy

The Bill introduces:

- a 7-day notice to leave period for those currently tied into a student accommodation contract; and
- a 28-day notice to leave period for agreements entered into while these provisions are in force.

The Law Society told us that it was supportive of these proposals but that clarification would be helpful in two areas:

- that the termination of a student residential tenancy for “a reason relating to coronavirus” may be done by an attorney, intervener or guardian and, in an emergency, it can be done by a *negotiorum gestor*; and
- that “a reason relating to coronavirus” could include a mental health condition attributable to the pandemic (and, if so, perhaps that needs to be applied as a general interpretation of that phrase).

The Committee invites the Cabinet Secretary to respond to the points of clarification raised by the Law Society.

Bankruptcy

The Bill contains measures to:

- make bankruptcy easier to access for those who need it;
- make it harder for creditors to make individuals (and sole traders) bankrupt; and
- make bankruptcy processes easier to administer.

The first set of changes are focused on Minimal Asset Process (“MAP”) bankruptcies. This process is a route into bankruptcy for people with few assets.

These measures:

- remove application fees from for those whose sole income comes from certain benefits and reduce them from £90 to £50 for others;
- increase the maximum level of debt covered by the process from the current £17,000 to £25,000 and student loan debt (which survives bankruptcy) is removed from that calculation.

The second change raises the minimum amount that must be owed to a creditor before that creditor can apply to the courts to make an individual bankrupt from £3,000 to £10,000.

The Scottish Government considers that these measures are proportionate and strike a fair balance between the general interest and the rights of creditors. These are interim measures and time limited.

The Law Society told us that it is broadly supportive of these measures but that clarification would be helpful in two areas:

- confirmation that a recipient and/or an appointee (attorney, intervener, guardian) may direct that a document be sent electronically to the appointee; and
- whether willingness to receive a document can be “inferred from the recipient having previously been willing to receive documents from the sender in that way and not having indicated unwillingness to do so again” – the proposed section 26(b)(iii) to the Interpretation and Legislative Reform (Scotland) Act 2010.

The Committee would welcome clarification from the Cabinet Secretary on the following points:

- **on what basis did the Scottish Government arrive at the revised figures for bankruptcy proceedings in the Bill? and**
- **whether there is a possibility that the bankruptcy provisions might be extended beyond the duration of the emergency legislation and, if so, what would be the process for doing so including consultation arrangements?**

Mental health

The Bill temporarily removes the requirement for a nominated person to have their signature witnessed by a prescribed person when they agree to become a named person. The other safeguards around the nomination process are unaffected by the Bill. In particular, nominations continue to have to be made in writing. The patient will still be required to have their signature witnessed by a prescribed person, in order to minimise the risk of coercion and to ensure that the patient is content that the nominated person should be their named person.

The view of the Law Society is that this provision appears to be a pragmatic solution to the potential difficulties of arranging for a prescribed person to witness a nominated person's signature during the current coronavirus outbreak.

The Cabinet Secretary told us that he believes this is a proportionate power and, along with other powers in the Bill, its use will be reported upon every two months.

The Committee agrees this is a proportionate power and that regular reporting on its use provides an additional safeguard. The Committee asks the Cabinet Secretary whether, in addition to reporting on the use of individual powers in this Bill and the previous Coronavirus Acts, the Scottish Government will also monitor the cumulative impact of the emergency COVID legislation on human rights.

Extension of time limits

The Bill makes provision to disapply certain time limits contained in the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") so that, from the date these provisions come into force, there is a period during which these time limits will not apply and the court can adjourn a case for such period as it considers appropriate.

Schedule 2, paragraph 1(4) of the Bill concerns section 200(1) of the 1995 Act which provides the court with a power to remand an offender for inquiry into physical or mental condition. The Law Society point out that the intention is to remove the time limits specified at sections 200(2) and 200(3) of the 1995 Act and provide that the court may adjourn a case for such a period as it considers appropriate. In its view, this amendment is a concern as it deals with the restriction of liberty and Law Society recommends this is amended to specify a finite period.

Schedule 2, paragraph 1(5) of the Bill proposes to allow the court an unfettered discretion to adjourn any such hearing for such period as it considers appropriate in relation to Section 245J (3) of the 1995 Act. The Law Society suggests there should be a finite period specified for those remanded in custody and it should not remain open-ended.

The Committee invites the Scottish Government to consider the views of the Law Society on the disapplication of time limits in relation to Schedule 2, paragraphs 1(4) and 1(5) of the 1995 Act.

Additional Dwelling Supplement (ADS)

The ADS is a land and buildings transaction tax supplement on purchases of additional residential properties in Scotland (such as buy-to-let properties and second homes) of £40,000 or more. If ADS has been paid, a taxpayer can make a claim for repayment if they dispose of the ownership of a previous main residence in the following 18-month period. The Bill increases the 18-month period to 27-months.

Given the current uncertainty around the extent and duration of any disruption to the housing market related to the coronavirus outbreak, the Bill enables the Scottish Ministers to make subordinate legislation amending these provisions.

The Cabinet Secretary was asked by the Committee whether consideration had been given to extending the period to 3 years on a similar basis to the provisions relating to the ADS in England. He responded that the housing market in Scotland is different to the housing market in England and that the Government's view is that the provisions in the Bill are a reasonable period of extension.

The Committee invites the Cabinet Secretary to provide further clarity as to how an increase of nine months was arrived at and to what extent this included consideration of the impact of COVID-19 on the housing market in rural areas.

Marriages and civil partnerships

The Committee asked the Cabinet Secretary whether consideration has been given to making provisions in the Bill to allow marriages and civil partnerships to take place. In particular, in exceptional circumstances such as where an individual is dying or is about to go overseas.

The Cabinet Secretary responded that registrars already have powers to allow marriages and civil partnerships in such circumstances. He was then asked by the Committee if this was the case why it doesn't appear to be happening.

The Cabinet Secretary states, in his letter dated 12 May, that it is currently possible for marriages or civil partnerships to take place, subject to the restrictions in the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. He explains that this is because the relevant marriage and civil partnership documentation can, under present legislation, be prioritised by a registrar and marriages and civil partnerships effected at great speed

The Committee welcomes the commitment of the Scottish Government, working with National Records of Scotland, to provide more information to the public on these arrangements and on who to contact in these circumstances. However, the Committee would also welcome further clarification regarding the extent to which, if these powers already exist, marriages and civil partnerships in exceptional circumstances are already happening.

UEFA European Championship

The Bill amends the UEFA European Championship (Scotland) Act 2020 Act by:

- changing the dates of the Championship period, the definition of the Championship and the repeal date to enable the event to be held in Glasgow in 2021 (with the possibility of further postponement into 2022 if necessary); and
- correcting a European Convention on Human Rights ("ECHR") compliance issue with an exception to the ticket touting offence for auctions of match tickets where the proceeds are given to charity.

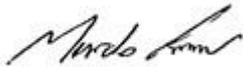
The Committee asked the Cabinet Secretary why these provisions, which are not related to the response to COVID-19, are included in the Bill. The Committee also asked what the Scottish Government's approach is more generally to including non-pandemic-related provisions in coronavirus primary and secondary legislation.

The Cabinet Secretary responded that it "is not our intention to do that as a matter of course or with anything major". He also stated that "the judgment that we applied was to ask whether items are essential at this stage. In the vast majority of cases, the answer was yes. Anything else is tangential and is just to save us a little time, but there are very few of those things".

Conclusion

The Committee recommends that the Parliament supports the general principles of the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Murdo Fraser', written in a cursive style.

**Murdo Fraser MSP,
Convener**