

LEGISLATIVE CONSENT MEMORANDUM

CORONAVIRUS BILL

Background

1. This memorandum has been lodged by Michael Russell MSP, Cabinet Secretary for Constitution, Europe and External Affairs, under Rule 9.B.3.1(a) of the Parliament's standing orders, and is supported by Jeane Freeman MSP, Cabinet Secretary for Health and Sport. The Coronavirus Bill was introduced in the House of Commons on 19 March 2020. The Bill can be found at <https://services.parliament.uk/Bills/2019-21/coronavirus.html>.

Content of the Coronavirus Bill

2. The Bill introduces measures which may be implemented in the event of an outbreak of COVID-19. These are designed as temporary measures directed specifically at allowing a flexible public health response during an outbreak. The Bill will have a limited life of two years which may be extended if necessary. The measures include new statutory powers and duties applicable to public authorities. They may be categorised as follows—

- a. measures to enhance the capacity and flexible deployment of staff
- b. relaxation of regulatory requirements in specific areas
- c. enhanced public health measures designed to contain the virus or slow its spread
- d. measures designed to deal with excess deaths
- e. measures to collect information necessary to deal with disruption to the food supply chain.

3. The Coronavirus Bill provides for the creation of an emergency period during which measures set out in the Bill will take effect in order to manage the effects of an outbreak of Coronavirus. The emergency period as specified in the Bill is a period of two years, which can be extended by up to six months at a time.

4. The Bill contains measures designed to either amend existing legislative provisions or introduce new statutory powers which are designed to mitigate the impacts of an outbreak of the Coronavirus and to provide public bodies with powers and measures to support an effective response to this.

Provisions which relate to Scotland

5. A summary of the clauses in the Bill that require legislative consent is as follows (clause numbers relate to the print of the Bill on introduction).

- 1. Clause 2: Emergency registration of nurses and other health and care professionals**

6. Clause 2 modifies the Nursing and Midwifery Order 2001 and the Health Professions Order 2001 to permit them to register additional healthcare professionals

in the event that the Secretary of State declares an emergency. The regulation of the healthcare professions is mostly reserved. However, the reservation is worded such that only professions which existed and were regulated prior to devolution are reserved. The regulation of any new health profession which has become subject to statutory regulation since devolution is a devolved matter.

7. Of the professions covered by the powers proposed by Clause 2, three have become statutorily regulated professions since devolution: Nursing Associates (regulated by the Nursing and Midwifery Council), and Operating Department Practitioners and Practitioner Psychologists (both regulated by The Health and Care Professions Council). Clause 2 specifies that Nursing Associates may only be registered for England. This was done because the Devolved Administrations opted not to create a regulated profession of “Nursing Associate” when England did. The provisions therefore do not make devolved provision in relation to nursing and Nursing Associates. However, the modifications proposed to the Health Professions Order 2001 do not contain such a limitation in relation to the other devolved professions identified. Insofar as the modifications to the Health Professions Order 2001 could apply to Operating Department Practitioners and Practitioner Psychologists, these provisions concern a matter within the competence of the Scottish Parliament and it is appropriate to bring a legislative consent motion before the Parliament regarding Clause 2.

2. Clause 9 and schedule 8: Temporary modification of mental health and mental capacity legislation

8. Clause 9(2) introduces schedule 8 which provides for modifications to existing mental health legislation in Scotland. These modified provisions are intended to be used only where it is not appropriate to rely on the existing mental health legislation.

9. Schedule 8 Part 2 provides for modifications to the Mental Health (Care and Treatment) (Scotland) Act 2003.

10. Schedule 8 paragraph 3 provides for the extension of the time period of emergency detention from 72 hours to 120 hours.

11. Schedule 8 paragraph 4 provides for certain amendments to the current provisions on the granting of short-term detention certificates including that an approved medical practitioner may grant a short-term detention certificate without consulting a mental health officer if compliance with that requirement is impractical or would involve undesirable delay. It also allows for a second short-term detention certificate to be granted in circumstances where it is impracticable to apply for a compulsory treatment order.

12. Schedule 8 paragraph 5 provides for the making of a compulsory treatment order application by a mental health officer on the basis of a medical report from a single approved medical practitioner where the requirement for reports from two medical practitioners is, in the view of the approved medical practitioner, impractical or would involve undesirable delay.

13. Schedule 8 paragraph 6 provides for the making of a transfer for treatment direction on the basis of a report from a single approved medical practitioner if the requirement for reports from two medical practitioners is impractical or would involve undesirable delay.

14. Schedule 8 paragraph 7 provides for the extension of the time period of a nurse's power to detain pending medical examination from three hours to six hours.

15. Schedule 8 paragraph 8 provides, in respect of admission to hospital, for the extension of the time period of within seven days to within that period or as soon as practicable after the end of that period.

16. Schedule 8 paragraph 9 provides for the suspension of requirements to review certain orders and directions authorising detention namely those under sections 77 (first mandatory review of compulsory treatment order); section 78 (further mandatory reviews of compulsory treatment order); section 139 (first review of compulsion order); section 140 (further reviews of compulsion order); section 182 (review of compulsion and restriction order); section 189 (reference to Tribunal by Scottish Ministers); section 206 (review of hospital direction and transfer for treatment direction); and section 213 (hospital direction and transfer for treatment direction: reference to Tribunal).

17. Schedule 8 paragraph 10 provides that medicine may be given to a patient without a certificate where the patient's responsible medical officer had requested a certificate from a designated medical practitioner but the practitioner has not yet issued a certificate.

18. Schedule 8 paragraph 11 provides that the Mental Health Tribunal for Scotland may consist of either the President or a single member selected by the President from the panel or the convener and a member selected by the President from the panel where it is impractical to follow paragraph 7(3) of schedule 2.

19. Schedule 8 Part 3 provides for modifications to the Criminal Procedure (Scotland) Act 1995.

20. Schedule 8 paragraph 12 provides for an extension of the time period for an assessment order from 14 days to 12 weeks.

21. Schedule 8 paragraph 13 provides for certain provisions being able to be exercised on the provision of oral or written evidence from one medical practitioner instead of two where complying with the requirement for the provision of written or oral evidence from two medical practitioners would be impractical or would involve undesirable delay. Those provisions are section 52M(2) (treatment order); section 53(2) (interim compulsion order); section 54(1) (temporary compulsion order); section 59A(") (hospital direction) and section 60C(2) (acquitted persons: detention for medical examination).

22. Schedule 8 paragraph 14 provides, in respect of admission to hospital, for the extension of the time period of within seven days to within that period or as soon as practicable after the end of that period in respect of section 53(8) (interim compulsion

order); section 54(2B) (temporary compulsion order); section 57A(5) (compulsion order); section 59A(4) and (7) (hospital direction).

23. Schedule 8 part 4 provides for modifications of subordinate legislation.

24. Schedule 8 paragraph 15 provides for the modification of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (SSI 2005/519) so that if the Tribunal considers that it would be impractical to hold a hearing rule 58 (power of Tribunal to decide case without a hearing) applies as if Rule 58(1)(d) to (f), 2(b) to (e), (3) and (4) were omitted.

25. Schedule 8 paragraph 16 provides for the modification of the Mental Health (Conflict of Interest) (Scotland) Regulations 2017 (SSI 2017/174) so that they apply as if certain regulations (all of which make provision about circumstances in which there is to be taken to be a conflict of interest for medical practitioners) were omitted. These regulations being regulation 2(b), regulation 4(1)(c) and (d), (2) and (3) and regulation 5(1)(b) and (2).

3. Clause 11: Indemnity for health service activity: Scotland

26. Indemnity arrangements are already in place to provide cover for clinical negligence in regular circumstances. The Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) covers all Health Board services, and independent GPs and their staff are indemnified through Medical Defence Organisations (MDOs). MDOs are private organisations that act on a not-for-profit basis in the interests of their members. However, if staff were to take on additional duties to respond to a pandemic, their current indemnity arrangements may not provide adequate cover as these arrangements can be restricted to particular kinds of practice, working hours or places of work. It is unlawful to practise as a healthcare professional in the UK without appropriate indemnity in place. If indemnity arrangements were not available this would be a barrier to a healthcare professional participating in the pandemic response.

27. In a pandemic situation the intention is to direct Health Boards to engage healthcare professionals to carry out activities to assist with the pandemic response on behalf of the Health Board. For example, if a NHS Board asks all GP practice nurses and dentists in its area to administer medication, care or treatment to those suffering from the coronavirus (a task that would normally be provided by staff of the Board), those nurses and dentists, although not employed by the Board, would be 'engaged' by the Board in providing NHS services on its behalf. These staff therefore would be covered by CNORIS.

28. The policy development work leading to this clause identified that CNORIS rules are fixed by regulations which it is not open to Ministers to change retrospectively and that CNORIS may not cover every situation which could arise during a pandemic response. The policy intention of this clause is to allow the Scottish Ministers to act as an insurer of last resort where no other arrangement applies.

29. It was also noted that having a parallel power to that taken by the UK Government to make arrangements for England and Wales would promote equality of

treatment across the four nations. It is considered that Scottish-based healthcare professionals may be less willing to assist in the response if they do not have the same protection as their colleagues elsewhere in the UK.

**4. Clause 15: Duty of local authority to assess needs: Scotland
Clause 16: Section 15: further provision**

30. Clauses 15 and 16 create powers for Ministers relating to assessments for social care.

31. These provisions increase flexibility for social care decision making during the period in which the provision is in force. It does this by allowing local authorities not to comply with particular assessment duties where complying would not be practical or would cause unnecessary delay in providing support to people. In each case it allows partial compliance with the duties. The core duties to provide support to meet need remain in place. The aim is to protect vulnerable people by allowing rapid prioritisation of urgent cases at a time when there is likely to be an influx of discharges from hospital, an influx of new cases from the community and a reduction in the social care staff available.

32. The core duty on local authorities to provide care and support to people in need of assistance will remain in place under section 12 of the Social Work (Scotland) Act 1968 (“1968 Act”). The provisions will clarify that authorities can provide support without first conducting an assessment. The provisions will also change duties to carry out a number of social care assessments into powers to assess. This will allow authorities to deliver urgent support and decide if and when assessments are required. The provisions will cover all cases in which adults may be being assessed for social care.

33. Subsections (1) and (2) amend the assessment duties for adult social care. The provisions give local authorities the option not to comply with their assessment duties under section 12A of the Social Work (Scotland) Act 1968 (“the 1968 Act”) and the principles under section 1 of the Social Care (Self-directed Support) Act 2013 (“the 2013 Act”).

34. The provisions only soften assessment duties under section 12A of the 1968 Act and the 2013 Act. The main duties on authorities under section 12 of the 1968 Act remain in place.

35. Subsections (3) and (4) amend the duties under the Carers (Scotland) Act 2016 (“the 2016 Act”) and associated regulations. Paragraph 4(a) amends section 6 of the 2016 Act to convert the duty to prepare an adult carer support plan to a power to do so. Paragraph 4(c) amends section 12 of the 2016 Act to convert the duty to prepare a young carer statement to a power to do so. These provisions give authorities the option not to comply with duties to prepare adult carer support plans, young carer statements or to have a conversation to identify needs.

36. The duty on authorities to provide carer support under section 24 of the 2016 Act remains in place. Subsections (5) and (6) alter the concept of “identified needs” in

the 2016 Act to allow for the fact that these needs may not be being identified in conversation with the carer.

37. Subsection (7) provides that a local authority is not required to comply with the requirements mentioned in subsection (8) where it would not be practical to comply or it would cause unnecessary delay in providing services to a child under section 22(1) the Children (Scotland) Act 1995 as read with section 23 of that Act, in relation to children or their families affected by disability. The subsection converts the duty to carry out a disability needs assessment in relation to a child or family member into a power to do so.

38. Subsection (9) provides that a local authority is not required to comply with the requirement in section 29(5) of the 1995 Act to carry out an assessment of the needs of a young person in relation to the provision of after-care (in the form of advice, guidance and assistance), for example, to a person who was formerly a looked after child, as a prerequisite for the provision of such after-care. It does so by converting the duty to carry out a needs assessment into a power to do so.

39. Subsections (12) and (13) ensure that the provisions apply to duties which already exist before the provision comes into force as well as duties which arise once it is in force. That ensures that where someone has already requested an assessment or is on a waiting list before the provision is switched on, the authority can still decide not to comply with their assessment duties towards that person.

40. Clause 16 makes further provision about guidance, charging and protecting authorities in any legal action if there are delays in providing assessments when the normal system is switched back on again.

41. Subsection (1) allows Scottish Ministers to issue guidance about exercising functions affected by the duties which are amended in section 1. This guidance can cover Part 2 of the 1968 Act, sections 22, 23 and 29 of the 1995 Act, sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003, section 1 of the 2013 Act and Parts 2 and 3 of the Carers Act 2016.

42. Subsection (2) requires local authorities to have regard to the guidance and allows Scottish Ministers to direct them to follow it. It also allows authorities to disregard pre-existing guidance so far as it is inconsistent with what Scottish Ministers issue under this section.

43. Subsection (3) restricts local authorities charging under section 87 of the 1968 Act for services if these were provided without complying with the assessment duties. Under subsection (4) partial compliance is treated as non-compliance for these purposes. The rationale is that charging people for services provided in an emergency situation without engaging them or conducting a full assessment would be unfair and would invite multiple challenges later on. Retrospective charging will be possible for those who become permanent residents in a care home following an assessment. Nothing prevents a local authority from conducting a needs and financial assessment after putting services in place.

44. Subsections (5) to (7) protect local authorities if they have significant backlogs to clear after the normal system is switched back on again. If there are court proceedings regarding delays to assessments, the court must take account of the length of time the emergency provisions were switched on for and the size of the backlog.

5. Clause 17 and schedule 12: Registration of deaths and still births etc.

Clause 19 and schedule 13: Review of cause of death certifications and cremations: Scotland

Amendments relating to the registration of deaths and still-births in Scotland (clause 17(2) and schedule 12, Part 2).

- *Information concerning deaths (paragraph 11)*

45. This paragraph allows a funeral director (where they are responsible for arranging the funeral of the deceased and are authorised by a relative) to serve as the informant to a death registration.

- *Giving information other than in person (paragraph 12)*

46. This paragraph allows a person who is serving as an informant to a death or still-birth, where unable to attend a registration office, to provide information to the local authority registrar remotely by telephone, or any other means specified in guidance by the Registrar General for Scotland (RGS). The paragraph also defines the circumstances under which a person is treated as unable to attend. It allows digital means of attesting to the accuracy of the information provided, and allows other means of attesting to that information to be spelled out in RGS guidance.

- *Delivery of documents by alternative methods (paragraph 13)*

47. This paragraph allows the delivery of registration documents relating to a death or still-birth by electronic or any other means specified in RGS guidance.

- *Transitional provision (paragraphs 15 and 16)*

48. These paragraphs contain saving and transitional provisions, to allow the completion of any death or still-birth process that is begun before the end of any period for which the provision has effect. They also specify a three months timescale from the end of such a period within which the giving or delivery of documents in accordance with the provisions of the 1965 Act must be completed. There are powers available to the RGS and district registrars to direct a later deadline, or to dispense with the completion of the requirements under the 1965 Act.

- *Review of death certificates (clause 19(1) and schedule 13, Part 1)*

49. This clause suspends the requirement for registrars to refer randomly selected Medical Certificates of Cause of Death (MCCD) under the Certification of Death (Scotland) Act 2011 and suspend interested persons reviews under section 4 of that Act. The Scottish Ministers will have the power to determine the point at which referrals for review of MCCD should be suspended from and when it is appropriate to re-instate the review system.

6. Clause 35 and schedule 15: Temporary closure of educational institutions and childcare premises
Clause 36 and schedule 16: Temporary continuity directions: education and childcare

50. Clauses 35 and 36, and schedules 15 and 16, create powers for Ministers relating to childcare providers, schools and further and higher education institutions in Scotland.

51. The provisions will require a “relevant authority” (the operator or manager or an educational establishment or school boarding / student accommodation) to have regard to advice relating to coronavirus from the Chief Medical Officer of the Scottish Administration. Before issuing any directions using the new powers in the Bill, the Scottish Ministers must have regard to such advice and be satisfied that the direction is a necessary and proportionate action in response to the incidence or transmission of coronavirus (in the case of a closure direction), or that it is a necessary and proportionate action for or in connection with the continued provision of education (in the case of an educational continuity direction).

52. Paragraph 8(1) of schedule 15 allows Ministers to give a direction to the relevant operator of an educational establishment (or more than one establishment) to require the relevant operator to take reasonable steps to restrict access to that establishment for a specified period. There is a related power to disapply any enactment or rule of law relating to education during that period, and certain legislative duties in education law are specifically disapplied, or failure to comply disregarded to the extent attributable to a direction, by paragraph 8(3). Such disapplication provision is subject to a 21-day review requirement.

53. There are specific powers to close school boarding and student accommodation (paragraphs 10 and 11), which include powers to confine pupils or students residing in such accommodation to their accommodation for quarantine purposes.

54. Paragraph 11 of schedule 15 gives Ministers power to issue directions to ensure educational continuity or to confer additional functions on those in charge of educational establishments. This includes use of education premises for public health protection purposes. This direction-making power is broad and would include provision requiring establishments to stay open or re-open, requiring operators to allow pupils / students from elsewhere to attend another establishment while their own is closed, require additional measures to ensure safe standards of hygiene and other measures to protect public health to be put in place, and altering term dates, holiday dates or exam dates.

55. All of the education directions in the Bill would be enforceable by Ministers applying to a court for an order for interdict or specific implement. Ministers could also issue guidance in connection with directions issued under these provisions, which relevant authorities would be under a duty to have regard to. Directions would have to be published and would have effect for the period specific in the direction or until revoked by a further direction.

7. Clause 49 and schedule 20: Powers relating to potentially infectious persons

56. Clause 49 introduces schedule 20. Part 3 of that schedule provides powers to be exercised in Scotland in respect of potentially infectious persons (within the meaning outlined in paragraph 2(1) of the schedule). These powers can only be used during a “transmission control period”, which is triggered when the Scottish Ministers make a declaration to the effect that the incidence or transmission of coronavirus disease constitutes a “serious and imminent threat to public health” and that the powers in the schedule will be an effective means of delaying or preventing significant further transmission of the disease. Such a declaration is to be published online and published as soon as practicable thereafter in the Edinburgh Gazette.

57. Part 3 of the schedule provides powers for “public health officers”, who are health board competent persons (designated under section 3(1) of the Public Health etc. (Scotland) Act 2008) and such other persons as the Scottish Ministers or health boards (as constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978) may designate. Where they have reasonable grounds to suspect that a person is potentially infectious, the powers can be exercised to:

- direct a person to go to a suitable place for the purposes of health screening and assessment (including directing the person to move from one place to another for those purposes),
- impose requirements in connection with screening and assessment,
- request a constable or immigration officer to remove the person to a suitable place for those purposes,
- require a person to stay at another suitable place for screening and assessment for a period not exceeding 48 hours, and
- impose or extend necessary and proportionate restrictions or requirements on a person in the interests of that person, for the protection of other people or for the maintenance of public health.

58. A constable or immigration officer can be enlisted to remove a potentially infectious person to a suitable place for screening and assessment or can themselves exercise the power to direct that a person go there when certain conditions (outlined in paragraph 28(3) and (4)) are met.

59. A constable or immigration officer is also given the power under the Bill to keep a potentially infectious person at a suitable place pending screening and assessment. They can only do this for a period of 24 hours (for a constable) and three hours (for an immigration officer) if it is considered necessary and proportionate and they must consult a public health officer before exercising this power if it is practicable to do so. In the event that the constable or immigration officer considers that the 24-hour-period needs to be extended, it can be extended for a further 24 hours or nine hours respectively, if authorised by a constable of the rank of superintendent or above or an immigration officer of the rank of senior immigration officer or above. At the outset, the constable or immigration officer must inform the potentially infectious person of the reason for keeping them at the place, including the maximum period that they can be kept there, and that it is an offence to abscond. This also applies if the person is required to be moved to another suitable place.

60. Paragraph 40 of the schedule makes provision which applies in cases where a power is exercised in relation to a child (defined in Scotland as an under 16). The responsibility of ensuring children comply with any requirement placed upon them vests in a “responsible adult” (a person who has custody or charge of the child for the time being or, a person with parental rights or responsibilities for the child).

61. Paragraph 38 provides a right of appeal to a sheriff or summary sheriff for individuals in relation to a requirement or restriction placed on them under paragraph 35 once initial screening and assessment is complete. This appeal can be made by a “responsible adult” where the restriction is placed on a child.

62. Paragraph 42(4) provides ancillary powers to enable a constable or immigration officer to use “reasonable force” in the exercise of the powers conferred by the schedule. Paragraph 43 makes clear that a constable or immigration officer must have regard to any relevant guidance issued when exercising their powers (by the Scottish Ministers for public health officers and constables and by the Secretary of State in respect of immigration officers). Constables and immigration officers must also have regard to any advice given by a public health officer in relation to a particular case.

63. Paragraph 45 provides that a person commits an offence if they fail, without reasonable excuse, to comply with any direction, reasonable instruction, requirement or restriction given to or imposed on them. It is also made an offence for them to abscond or attempt to abscond while being removed to or kept at a place, to knowingly provide false or misleading information or to obstruct a person exercising powers under Part 3 of the schedule. A person guilty of an offence under that paragraph is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or to both).

64. Paragraph 39 provides that the Scottish Ministers may pay compensation to persons who are subject to a requirement or restriction imposed under paragraph 35 of the schedule. The Bill also makes an amendment to the Public Health etc. (Scotland) Act 2008 to the effect that during a “transmission control period”, payment of compensation by health boards to those subject to certain restrictions under that Act and their carers is discretionary.

8. Clause 50 and schedule 21: Powers to give directions relating to events, gatherings and premises

65. Clause 50 introduces Part 3 of schedule 21, which makes provision for the Scottish Ministers to give directions relating to events, gatherings and premises. The provisions have a devolved purpose as they relate to public health. Equivalent powers are provided in Parts 2, 4 and 5 of the schedule for England, Wales and Northern Ireland.

66. Paragraph 12 provides that the Scottish Ministers cannot use the powers unless they make a particular declaration of threat to public health in Scotland due to coronavirus. This starts a “public health response period” during which the powers can be used (paragraph 13).

67. Paragraph 14 allows the Scottish Ministers to issue directions imposing prohibitions, requirements or restrictions in relation to the holding of an event or gathering for the purpose of (a) preventing, protecting against, controlling or providing a public health response to the incidence or transmission of coronavirus, or (b) facilitating the most appropriate deployment of medical or emergency personnel and resource. The directions can be issued in relation to a specified event or gathering, or events or gathering of a specified description.

68. Para 15 allows the Scottish Ministers to issue directions imposing prohibitions, restrictions or requirements in relation to premises for the purpose of (a) preventing, protecting against, controlling or providing a public health response to the incidence or transmission of coronavirus disease, or (b) facilitating the most appropriate deployment of medical or emergency personnel and resource. The power could be used to close premises or restrict the number of persons entering or remaining inside them. The powers can be used to issue directions in relation to specific premises, or more generally on premises of a specified description.

69. Paragraphs 16 and 17 provide for matters relating to procedure, including a power to vary or revoke the direction. Paragraph 17 requires Ministers to have regard to any relevant advice published by the Chief Medical Officer of Scotland and makes requirements with regards to publishing directions and notifying people affected.

70. Paragraph 18 of the schedule provides for enforcement of the directions by a constable or other person designated for the purpose by the Scottish Ministers.

71. Paragraph 19 provides specific provision allowing the chief constable of the Police Service of Scotland to authorise police custody and security officers to exercise the enforcement powers. Paragraphs 20 and 21 make provision for offences. A person commits an offence if they fail, without reasonable excuse, to comply with a prohibition, requirement or restriction imposed on them by a direction.

72. Paragraph 22 of the schedule gives the Scottish Ministers a power to pay compensation.

73. Paragraph 24 makes provision requiring Ministers to keep directions they make under review and revoke them if they are no longer required.

9. Clause 34: Vaccination and Immunisation: Scotland

74. Clause 34 modifies section 40 of the National Health Service (Scotland) Act 1978. The requirement in that section that vaccinations and immunisations be administered by medical practitioners or persons acting under their direction and control is removed. The effect of this is that, during the period when the modification is in force, the Scottish Ministers are to make arrangements for the provision of vaccinations and immunisations in respect of any disease – in practice this function is delegated by the Ministers to health boards and this delegation will continue while the modification is in force.

75. In connection with the above, clause 34 also consequentially modifies an existing provision which delegates the section 40 function to territorial health boards,

so that boards can in practice continue to exercise this function as they do now, but without the requirement that this always be under the direction and control of a medical practitioner. These modifications will allow a wider range of health professionals to administer vaccinations and immunisations (in accordance with existing regulatory provisions about the administration of vaccines in the Human Medicines Regulations 2012) in order to respond as flexibly as may be required to the pandemic. This would include other vaccinations delivered as part of the Scottish Government's national programmes as general practice capacity may be affected by the pandemic.

10. Clause 6 and schedule 5: Emergency registration of social workers: Scotland

76. Clause 6 and schedule 5 provide for the temporary registration of social workers in Scotland through the creation of a new Part of the Register which is administered by the Scottish Social Services Council ("SSSC") under the Regulation of Care (Scotland) Act 2001 to assist with any increase in demand for social services arising from an outbreak of COVID-19. These provisions will enable retired social workers, those who are on a career break from social work employment and social work students to apply to become temporary social workers which enables assistance to be obtained from a workforce that will be the most suitable to deploy quickly. The Scottish Ministers will issue a direction to the SSSC as to when it needs to start considering temporary registrations. Before issuing such a direction, the Scottish Ministers will have regard to any advice from the Chief Medical Officer relating to the coronavirus outbreak and be satisfied that the direction is a necessary and proportionate action in relation to social work services in Scotland. The Scottish Ministers can also issue a direction to the SSSC to cease considering any applications for temporary registration.

77. In addition, provision is made for an extension of the time allowed for social workers and other social care workers who work in registered care services and apply for registration. At present these workers must be registered with the SSSC to work in certain care services. These workers currently have six months to make their application and complete the registration process. It is proposed that the six month period is extended to 12 months for a limited period of time. This is in order to facilitate the recruitment of, in particular, additional social services workers to assist with any increase in demand for services following the outbreak of COVID-19.

11. Clause 32: Temporary disapplication of disclosure offences: Scotland

Clause 33: Temporary power to reclassify disclosure requests made in connection with PVG scheme membership: Scotland

78. Clause 32 provides that the Scottish Ministers may issue a direction to suspend two offences in the 2007 Act. Suspending the offences would allow staff to be recruited or supplied for certain roles which the direction will specify, for example, health and care, without the risk of the recruiting body (most likely an NHS board) committing an offence should PVG checks be unavailable, or taking longer than usual.

79. Clause 33 provides that the Scottish Ministers may treat disclosure requests made in connection with PVG scheme membership as if they were a request for confirmation of a person's scheme membership and barred status. This would allow

Ministers to confirm to an employer that an individual seeking certain roles was not barred from regulated work, for example nursing, by carrying out only a check of the barred lists held across the UK. No check of criminal records would be made in this case. This would speed up operations in the event of Disclosure Scotland's staffing resource being reduced due to infection.

12. Clause 56 and schedule 27: Powers in relation to transport, storage and disposal of dead bodies etc.

80. Clause 56 introduces schedule 27 which contains powers for local authorities to require information from a person about capacity to deal with transportation, storage and disposal of deceased bodies or human remains. There are corresponding powers for the Scottish Ministers to request information from a local authority about capacity to manage deceased bodies and human remains. These powers will help inform decisions about capacity in the death management system both locally and nationally.

81. The Bill also introduces powers of direction to enable local authorities to direct persons, other than individuals, who are in the death management system or who may have premises, facilities or equipment, to do anything calculated to facilitate the effective management of excess deaths caused by COVID-19. The purpose of the powers is to help ensure that deceased bodies and human remains can be stored, transported and disposed of with care and respect and in accordance with health guidelines. The Bill also contains powers for the Scottish Ministers to direct local authorities where they have failed to properly exercise their functions in these provisions.

82. The powers of direction will only be activated if the Scottish Ministers have determined that there is likely to be insufficient capacity in a local authority's area to manage dead bodies and human remains, and that the powers of direction are likely to be an effective means of addressing capacity issues.

83. The Bill further provides that a scheme will be published in order to compensate those to whom directions are given, with payments made by the local authority that gave the direction and creates a number of offences for failures to comply with the information sharing provisions or directions.

13. Clause 19 and schedule 13: Review of cause of death certificates and cremations: Scotland

84. Clause 19 and schedule 13, Part 2 suspend the statutory procedures as set out in sections 53 to 56 of the Burial and Cremation (Scotland) Act 2016 and regulations 12(1), (2) and (3) and 13(2) of the Cremation (Scotland) Regulations 2019, for the handling of ashes by funeral directors and cremation authorities. The Scottish Ministers will have the power to determine the point when the duties should be suspended from and when it is appropriate to re-instate them.

85. Section 87 of the 2016 Act places duties on local authorities to provide a funeral where no one else is available. The duty includes a requirement for the local authority to attempt to locate the family and ascertain if they wish the ashes. This duty in relation to ashes is temporarily suspended.

86. This clause also provides powers to Ministers to disapply the offence under section 49 of the 2016 Act insofar as it relates to the signing of an application for cremation under the Act.

14. Clause 65: Postponement of Scottish Parliament elections for constituency vacancies

Clause 66: Postponement of local authority elections in Scotland for casual vacancies

87. Clause 65 provides a power for the Presiding Officer of the Scottish Parliament to postpone a Scottish Parliamentary by-election. Where a date has been fixed for the by-election, the Presiding Officer can fix a new date for the poll. Where no date has been fixed, the Presiding Officer can fix a date for the poll which is outside the period required by section 9(3) of the Scotland Act 1998. The Presiding Officer must fix a new date as soon as is reasonably practicable. In exercising the power, the Presiding Officer is required to consult the Scottish Ministers and the Convener of the Electoral Management Board. The power can be exercised more than once but will not allow a by-election to be fixed beyond 6 May 2021.

88. Clause 66 provides a power for returning officers to postpone a local government by-election. Where a date has been fixed for the by-election, the returning officer can fix a new date for the poll. Where no date has been fixed the returning officer can fix a date for the poll which is outside the period required by section 37(1) of the Local Government (Scotland) Act 1973. The returning officer must fix a new date as soon as reasonably practicable. In exercising the power, the returning officer is required to consult the Scottish Ministers and the Convener of the Electoral Management Board. The power can be exercised more than once but will not allow a by-election to be fixed beyond 6 May 2021.

15. Clause 44: NHS pension schemes: Suspension of restrictions on return to work: Scotland

89. Clause 44 makes provisions relating to the removal of restrictions on retired members of the NHS Pension Scheme who return to work.

90. Currently members who retire from the NHS Pension Scheme and return to work must not work more than 16 hours per week in the first month of returning to work otherwise their pension is suspended. Special class status allows eligible members to retire at age 55 rather than the Scheme's normal pension age of 60. On returning to work their pension can be subject to abatement depending on the level of their earnings and pension. Members who take partial retirement must reduce their earnings by 10% for at least 12 months following partial retirement. If their earnings exceed 90% of their pre-retirement earnings their pension would cease.

91. This clause will temporarily suspend current restrictions on payment of pension benefits for members who have retired from the NHS Pension Scheme and return to work, the purpose of which is to maximise staff availability.

16. Clause 3: Emergency arrangements concerning practitioners: Scotland

92. The Scottish Ministers expect the coronavirus emergency to create both increased demand for health care and at the same time cause an increased level of staff absence in all parts of the NHS in Scotland. Powers exist within the Medical Act 1983 (the “1983 Act”) to temporarily register medical practitioners where an emergency occurs which poses a threat to human life. It is anticipated that these powers will be used by the General Medical Council (“GMC”) to restore the registration of qualified medical practitioners who do not currently hold an active registration, (such as those who are retired) in order to increase the supply of medical practitioners.

93. In addition to the UK-wide system of professional registration operated by the GMC, the NHS in Scotland also operates “performers lists” with which a GP in Scotland must be registered before they can practise on behalf of the NHS. This acts as an additional layer of regulation and control. It allows the NHS in Scotland to suspend or bar a GP from practising in the NHS specifically without depending upon the GMC to strike off the GP altogether.

94. The Scottish Government has identified that this additional requirement to be registered with a performers list may create a barrier to GPs responding quickly to assist with the coronavirus emergency. The risk is that although many previously inactive GPs may find themselves suddenly registered as medical practitioners and general practitioners with the GMC, they would still be ineligible to act as an NHS general practitioner because their name is not on a performers list.

17. Clause 23: Power to require information relating to food supply chains

Clause 24: Authorities which may require information

Clause 25: Restrictions on use and disclosure of information

Clause 26: Enforcement of requirement to provide information

Clause 27: Meaning of “food supply chain” and related expressions

Schedule 14 – information relating to food supply chains: financial penalties

95. Clauses 23 - 27 provide “appropriate authorities” with the power to require the provision of specified information from those involved in the food supply chain. This power is being included in the Bill as a last resort measure, for use in the event that industry should refuse to provide the information voluntarily. The information must be necessary to establish whether there is disruption to the food supply chain, and the nature of that disruption.

96. The power can be exercised by the Secretary of State, and by the Scottish Ministers and the devolved administrations in Wales and Northern Ireland in respect of devolved matters. In the event that the Secretary of State seeks to exercise the power in respect of devolved matters, the consent of the Scottish Ministers, and other devolved administrations, must be obtained. In such circumstances, the Secretary of State must share the information obtained with consent. Otherwise, there are restrictions on the use and disclosure of information gathered under the power.

97. The appropriate authorities can impose financial penalties for failures to comply with requests for information or for providing information that is false or misleading. There is a schedule of the Bill which sets out further information on the financial penalties, including calculation of the maximum penalty and the procedure for appeals.

18. Clause 47 and schedule 18: Health Protection Regulations: Scotland

98. Clause 47 introduces schedule 18 which makes provision allowing the Scottish Ministers 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 (whether from risks originating there or elsewhere).

99. These provisions mirror existing provision in England and Wales and ensure greater consistency across the UK in terms of the powers available. The provision that can be made under the regulation-making power is necessarily wide and can include imposing restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health. In particular, the power can be used to make provision imposing a “special restriction or requirement”, but only if additional procedural requirements are met.

100. “Special restriction or requirement” is defined in the provision and includes, amongst other things, that a person be disinfected, wear protective clothing, or have their health monitored or answer questions about their health. The regulations can also be used to put in place measures requiring that a child be kept from school; prohibiting or restricting events or gatherings; or impose requirements relating to cremation or handling, transport or disposal of human remains.

101. The provisions put in place various safeguards that apply in relation to the use of the power. These include provisions to ensure that restrictions and requirements authorised by the regulations can only be imposed where it would be proportionate to do so. They also include a requirement that regulations enabling the imposition of a special restriction or requirement cannot be made unless they are in response to a serious and imminent threat to public health, or the imposition of the restriction or requirement is expressed as being contingent on such a threat. Particular requirements are also put in place with regard to appeals and reviews of decisions made under any regulations made. The Bill provides that any Regulations made under these provisions are subject to the affirmative procedure, with an emergency procedure in cases of urgency. If Scottish Ministers consider that the regulations need to be made urgently, the regulations must be laid before the Scottish Parliament and cease to have effect after 28 days unless the regulations have been approved by a resolution of the Scottish Parliament.

19. Clause 21: Appointment of temporary Judicial Commissioners Clause 22: Time limits in relation to urgent warrants etc. under Investigatory Powers Act

Appointment of temporary Judicial Commissioners

102. The Investigatory Powers Act 2016 (IPA), the Regulation of Investigatory Powers Act 2000, the Regulation of Investigatory Powers (Scotland) Act 2000 and the

Police Act 1997 set out the statutory basis for the use of various investigatory powers by the intelligence and law enforcement agencies. These powers may only be used when an authorisation is made, or a warrant is issued under the relevant Act.

103. The Investigatory Powers Commissioner oversees the use of these powers. The Commissioner is supported in this role by 15 Judicial Commissioners (JCs), all of whom have held, or hold, high judicial office. To mitigate the impacts of COVID-19, and particularly due to many of the JCs being aged 70 or over, this clause provides a power to allow the Home Secretary to make regulations allowing for temporary Commissioners to be appointed at the request of the Investigatory Powers Commissioner. The temporary Commissioners will have the same oversight functions as current JCs.

104. The appointment of a JC by the Investigatory Powers Commissioner cannot normally be made unless recommended by certain senior members of the judiciary including the Lord President of the Court of Session. Additionally, the Prime Minister must consult with the Scottish Ministers and have regard to a memorandum of understanding agreed between the Prime Minister and the Scottish Ministers.

105. The regulations under this clause would require the Commissioner to notify the Lord President of any appointment under these regulations. Any appointment of a temporary Commissioner will be for one or more terms, for six months each and not exceeding 12 months in total.

Time limits in relation to urgent warrants etc. under the Investigatory Powers Act

106. The Scottish Ministers may issue warrants under the IPA 2016. This includes the issuing of urgent warrants. When an urgent warrant is issued, the Scottish Ministers are required to notify a JC within three working days of doing so.

107. This clause allows the Secretary of State (in practice the Home Secretary), at the request of the Investigatory Powers Commissioner, to extend the time allowed for urgent warrants to be reviewed by a JC. The length of time these powers can be amended is limited to no more than 12 working days. Those regulations will be time limited after 12 months after they come into force.

Reasons for seeking a legislative consent motion

1. Clause 2: Emergency registration of nurses and other health and care professionals)

108. The Scottish Government recommends consent because, with the exception of Operating Department Practitioners, the key professions being considered for emergency registration under the proposed powers are within reserved competence. It would therefore be pragmatic in this case for the UK Government to legislate on behalf of the Scottish Parliament.

2. Clause 9 and schedule 8: Temporary modification of mental health and mental capacity legislation)

109. The Scottish Government recommends consent as this is Scottish legislation within a devolved area. It is necessary for the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Criminal Procedure (Scotland) Act 1995 to be modified during the emergency period. There is no suitable legislative vehicle in Scotland in which to make this primary legislation amendment to an emergency timeframe. Including these modifications in the Bill is the most expeditious method of modifying the relevant provisions.

3. Clause 11: Indemnity for pandemic-related health service activity: Scotland

110. Clause 11 empowers the Scottish Ministers to make indemnity arrangements for personal injury liabilities and professional negligence liabilities to any person involved in the treatment or diagnosis of coronavirus on behalf of the health service. The health service in Scotland is a devolved matter, so the structures, operation and administration of the NHS in Scotland are within the legislative competence of the Scottish Parliament. The same provision could be made by the Scottish Parliament. Additionally, the clause extends a new statutory power to the Scottish Ministers and therefore alters their executive competence. For both of these reasons it is appropriate to lodge a legislative consent motion regarding Clause 11.

111. Clause 11 was instructed by Scottish Government and drafted by the Parliamentary Counsel Office in Scotland, it was then provided to the UK Government for inclusion in the Bill. It is the result of Scottish Government policy development. Within that development the other options considered were (A) to reach agreement with MDOs to extend their existing cover to include the type of pandemic response activities required, (B) to instruct Health Boards to ensure that every person involved was “engaged” by them such that CNORIS could apply and (C) taking a power to provide specific Scottish Government-funded “pandemic response” indemnity.

112. Option A was dismissed because negotiating arrangements with all MDOs who have members in Scotland would require a great deal of administrative resource and financial outlay – especially if the arrangement had to be maintained and updated to apply to similar emergencies in the future. Option B has been partially pursued but will be supplemented by Option C. The CNORIS Regulations prevent Ministers from paying out on any claim where the person was not employed or engaged by the Health Board or where administrative requirements have not been met. It was considered that there may be gaps in which a person could not evidence their entitlement to cover under CNORIS. Clause 11 was therefore instructed to give effect to Option C by giving Ministers the discretionary power to provide indemnity cover. In practice this power will only need to be used in cases where CNORIS does not apply.

**4. Clause 15: Duty of local authority to assess needs: Scotland
Clause 16: Section 15: further provision**

113. Primary legislation is required to make these amendments. While social care is fully devolved, a significant aspect of the policy considerations in relation to these

provisions has been to ensure, insofar as is appropriate, consistency with powers being introduced in other parts of the United Kingdom.

114. It is therefore more appropriate to take forward the proposed changes as part of the wider package of measures being put in place via the Coronavirus Bill.

5. Clause 17 and schedule 12: Registration of deaths and still births etc.
Clause 19 and schedule 13: Review of cause of death certifications and cremations: Scotland

- *Information concerning deaths* (schedule 8, Part 2, paragraph 11)

115. While provision in section 23 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (“the 1965 Act”) allows funeral directors to serve as informants to a death in Scotland, this is by means of a catch-all provision after a number of other persons listed in the section have been exhausted as possible informants, rather than as a first option for families. Inclusion in this Bill would allow the family of the deceased to meet their obligation to provide information to the registrar, by so authorising the funeral director in the emergency circumstances, without first needing to exhaust the list in the section of persons who have the duty to provide the information. This would increase choice and convenience in emergency circumstances, while maintaining a robust process of information gathering.

- *Giving information other than in person* (paragraph 12)

116. Section 23(1A) of the 1965 Act was added by provision in the Local Electoral Administration and Registration Services (Scotland) Act 2006 (“the LEARS Act”). Section 23(1A) enables the submission to the registrar of the death registration form, and attestation of the form, by means to be prescribed. Section 23(1A) is not fully in force. Further implementation of the LEARS Act provisions would enable methods of completing the death registration form other than by attending at a registration office. The current provision is that a person must attend in person to provide information to the registrar. There is insufficient time to fully implement the LEARS Act provisions, and other considerations arise in relation to such implementation.

117. In addition, while as part of the implementation of the Certification of Death (Scotland) Act 2011 the installation and piloting of digital signature devices into each registration office has taken place, the regulations have not yet been made to enable the attestation of a registration form by a means other than a manual wet ink signature, which requires to be applied by an informant in the registration office. This paragraph of schedule 8 is required, as there is insufficient time to make such regulations, and the need to facilitate death and still-birth registration without in-person attendance is pressing.

- *Delivery of documents by alternative methods* (paragraph 13)

118. Similarly, to facilitate non-physical completion of the registration process, the transmission of key registration documents both to and from the local authority registrar is necessary, and is not currently provided for under registration law in Scotland.

- *Transitional provision (paragraphs 15 and 16)*

119. Powers available to the Registrar General for Scotland (RGS) to direct aspects of death and still-birth registration, and to issue guidance to local authorities, are essential to the smooth operation of remote registration using electronic transmission of documents and signature of register pages by transcription or electronic means. Powers available to the RGS are also necessary, to implement necessary flexibilities in timings and deadlines for the completion of registration processes that are undertaken up to the end of the period/s during which the provisions of Part 2 of schedule 8 would have effect.

- *Review of death certificates (clause 19 and schedule 13)*

120. While section 100 of the Burial and Cremation (Scotland) Act 2016 enables the Scottish Ministers to modify the 2016 Act and other legislation for the protection of public health, it is more appropriate to take forward the proposed changes as part of the wider package of measures being put in place via the Coronavirus Bill.

121. The Death Certification Review Service (DCRS) was established by the Certification of Death (Scotland) Act 2011. One of the key functions is the review of a random selection of medical certificates of cause of death (MCCD) in Scotland. This is normally set at 14% of all MCCD. An increase in the number of deaths in Scotland will lead to an increase in the number of cases that are randomly selected for review. While powers do exist under the Certification of Death (Scotland) Act 2011 and the Registration of Birth, Deaths and Marriages (Scotland) Act 1965 to suspend the review service by way of secondary legislation it is considered more appropriate to take forward the proposed changes as part of the wider package of measures being put in place via the Coronavirus Bill.

6. Clause 35 and schedule 15: Temporary closure of educational institutions and childcare premises

Clause 26 and schedule 16: Temporary continuity directions: education and childcare

122. The powers to make directions as described above will give the Scottish Ministers special powers during the emergency period to take steps to protect public health by closing schools and other educational establishments and to make special provision for the continuity of education, so that the impact of any virus outbreak on children, young people and student populations is mitigated.

123. A significant aspect of the policy considerations in relation to these provisions has been to ensure, insofar as is appropriate, consistency with powers being introduced in other parts of the United Kingdom.

124. It is appropriate that these powers are exercisable by the Scottish Ministers, within their sphere of devolved competence. The Scottish Government recommends to ensure that Ministers have a broad range of powers to respond flexibly to any emergency situation within the education sector.

7. Clause 49 and schedule 20: Powers relating to potentially infectious persons

125. The Scottish Government recommends consent in order to provide the public health officers, constables and immigration officers (insofar as they are exercising public health functions) in Scotland with the necessary powers in the event that they need to be used, in relation to controlling an outbreak of COVID-19. Devolved health and police powers are conferred in this UK Bill to ensure that Ministers, health officials and constables have the same powers across the UK and can respond to the public health threat posed by COVID-19 in a coherent manner.

126. The Scottish Government also recommends consent in order to create an offence of non-compliance with a restriction or requirement placed on a potentially infectious person and to create a right of appeal against that restriction to a sheriff or summary sheriff. These provisions will ensure that there is a sufficient incentive for people to comply with restrictions placed on them in the interests of public health and that sufficient safeguards exist for individuals to challenge the imposition of such restrictions.

127. Legislative consent is also required for the conferral of powers on the Scottish Ministers to pay compensation to those who are subject to restrictions under the Bill and for the modification of the compensation provisions under the Public Health etc. (Scotland) Act 2008. It is considered that a discretion for the Scottish Ministers to pay such compensation is appropriate in the context of a COVID-19 pandemic.

8. Clause 50 and schedule 21: Powers to give directions relating to events, gatherings and premises

128. The powers to make directions in relation to events, gatherings and premises in Scotland ensure the Scottish Ministers have powers necessary to provide a full public health response to the coronavirus. The provisions have a devolved purpose relating to public health.

129. It is considered necessary to make this provision in the Bill, subject to consent, rather than any other route due to (a) the timescales involved in ensuring these powers are in place in time to respond to a significant outbreak, and (b) the benefits of taking a consistent UK-wide approach to the response. A significant aspect of the policy considerations in relation to these provisions has been to ensure, insofar as is appropriate, consistency with powers being introduced in other parts of the United Kingdom.

130. It is appropriate that these powers are exercisable by the Scottish Ministers in a devolved area. The Scottish Government recommends consent in order to ensure that Ministers have the full range of powers to respond and the same powers in relation to events, gatherings and premises that will apply across the rest of the UK.

9. Clause 34: Vaccination and Immunisation: Scotland

131. The function contained within section 40 of the National Health Service (Scotland) Act 1978 is wholly devolved as part of one of the functions relating to the delivery of the wider health service in Scotland. The Scottish Government recommends consent in order to make the necessary modification to section 40 (and associated consequential amendment to the delegated power under which this function is given to health boards). As noted above, section 40, and the provision delegating it to territorial health boards, currently contain a restriction on the way in which vaccinations and immunisations are administered. They currently require that this be done by or under the direction or control of a medical practitioner. Historically, this has meant that the delivery of vaccinations has largely been restricted to general practice and this arrangement is perhaps now outdated.

132. Health Boards in Scotland are currently developing alternative programmes for vaccination delivery that allow GPs to focus on what only they can do but this is a longer-term programme (the Scottish Government's Vaccination Transformation Programme).

133. The Bill provision is required in order to make the amendment to section 40 which could not be achieved within the necessary timeframe in Scotland in order to respond to the pandemic. There is no suitable legislative vehicle in Scotland in which to make this primary legislation amendment to an emergency timeframe. The amendment to the delegated health board function (contained in The Functions of Health Boards (Scotland) Order 1991) could have been made by Scottish subordinate legislation; however as this is merely an amendment which is consequential upon the section 40 modification then it is considered expedient to also make the amendment in the Bill.

134. The modification of section 40 to remove the direction and control restriction also achieves consistency with the position in England and Wales, where no such restriction applies.

10. Clause 6 and schedule 5: Emergency registration of social workers: Scotland

135. The Scottish Government recommends consent in order to make changes to the Regulation of Care (Scotland) Act 2001 to enable retired social workers, those who are on a career break as a social worker and social work students to be registered as a temporary social worker with the SSSC so they can be recruited to provide assistance with social work services as soon as is possible to alleviate the burden on these services following an outbreak of COVID-19. Legislative consent is also being sought to make changes to devolved legislation to bring forward these changes at the earliest opportunity and as far as is appropriate, to achieve consistency with reciprocal powers being introduced in other parts of the United Kingdom. Legislative consent is also being sought for the functions which the Scottish Ministers will be able to exercise in relation to issuing directions to the SSSC about when to start and stop considering applications for temporary registration.

136. Legislative consent is also being sought for the changes that will be made to devolved subordinate legislation, to change the timescales in which social service workers and social workers who work in the care service sector have to register with the SSSC. The provisions enable the time allowed for them to register to be extended from six months to within 12 months of commencing employment in a care service. This will help ensure the SSSC has capacity to register all within the requisite timescales and reduce requirements on newly recruited staff in terms of commencing the registration process. The change in the timescales will be made for a limited period of time. This change could be made by bringing forward regulations under section 78 of the Public Services Reform (Scotland) Act 2010 rather than in primary legislation (which is subject to affirmative procedure). It is important to make this change at an earliest opportunity to enable employers /care providers to start recruiting additional staff knowing there is a longer period for the Regulator to complete the registration process to alleviate workforce pressures, given it is a criminal offence under the Registration of Social Workers and Social Service Workers in Care Services (Scotland) Regulations 2013/227 for care providers to employ workers who do not comply with the registration process (which includes the timescales for registration). Accordingly, seeking legislative consent for making provision in the Bill enables this change to take effect at the earliest opportunity.

- 11. Clause 32: Temporary disapplication of disclosure offences: Scotland**
Clause 33: Temporary power to reclassify disclosure requests made in connection with PVG scheme membership: Scotland

137. The Scottish Government recommends consent because the Scottish Ministers do not have powers now in the 2007 Act to achieve the outcome sought. Including these clauses in the Bill is the most expeditious method of having the requested provisions in place. The power to issue a direction in respect of Ministers' functions under the 2007 Act may also support the delivery of the policy proposals in this Bill with regard to temporary registration of health care and social care professionals in Scotland.

- 12. Clause 56 and schedule 27: Powers in relation to transport, storage and disposal of dead bodies etc.**

138. The Scottish Government is recommending consent because local authorities and the Scottish Ministers do not have the powers to direct private organisations involved in the death management industry to deal with any emerging issues in relation to the transport, storage and disposal of dead bodies that may be needed during the COVID-19 outbreak. Including these clauses in the Bill is the most expeditious method of having the necessary powers in place.

- 13. Clause 19 and schedule 13: Review of cause of death certificates and cremations: Scotland**

139. Sections 51 to 56 of the Burial and Cremation (Scotland) Act 2016 set out the procedures for the handling of ashes. These procedures are deliberately detailed and place specified duties on funeral directors and on cremation authorities to ensure that

ashes are always accounted for and able to be traced. There are statutory minimum time periods attached to each of these duties.

140. What were previously known as National Assistance Funerals are now dealt with under section 87 of the 2016 Act and local authorities will arrange a funeral where there is no one else to do so. As part of that application procedure, the local authority is obliged to attempt to trace any next of kin to ascertain if they wish to have the ashes.

141. During an epidemic / pandemic it is likely that applicants will not be able to be contacted or there may be staff shortages at funeral director businesses, local authorities or cremation authorities. To ensure that ashes are not lost during this period, The Scottish Government intends to remove the requirement for funeral directors, local authorities and cremation authorities to contact applicants and require them to retain the ashes until the suspension is lifted.

142. The Scottish Government also intend to suspend the offence under section 49 associated with the making of an application for cremation to facilitate the arranging of funerals by entitled persons to help expedite disposals where appropriate.

14. Clause 65: Postponement of Scottish Parliament elections for constituency vacancies

Clause 66: Postponement of local authority elections in Scotland for casual vacancies

143. Currently, when a vacancy arises in a Scottish Parliament constituency or a Scottish local authority, the Presiding Officer of the Scottish Parliament or the relevant returning officer, respectively, are obliged to fix a date for a poll at a by-election to fill that vacancy within the specified period (section 9 of the Scotland Act 1998 and section 37 of the Local Government (Scotland) Act 1973). It is not possible to fix the date for the by-election outside these periods. The provisions will enable the Presiding Officer and returning officer necessary flexibility to postpone by-elections where they consider, in consultation with Scottish Ministers and the Electoral Management Board, that it is necessary to do so.

144. The Scotland Act 2016 devolved the conduct of Scottish Parliament and Scottish local government elections to the Scottish Parliament. However, especially given that several local government by-elections are planned in the immediate future, it was felt that the quickest route to implementing these necessary changes is through the UK Bill and a legislative consent motion. In addition, by-elections can arise at any time for due, for instance, resignation or death of an office holder. These changes will allow the Presiding Officer and returning officers to respond appropriately to such vacancies which may arise in the period to which the powers apply.

15. Clause 44: NHS pension schemes: suspension of restrictions on return to work: Scotland

145. The Scottish Ministers have executively devolved powers to amend NHS Pension Scheme Regulations, subject to HM Treasury consent, so these changes could have been made by introducing an amending SSI. However, it was felt that the quickest route to implementing these changes is through the UK Bill and a

legislative consent motion. Also, the NHS Pension Scheme in Scotland largely mirrors the scheme in England and Wales and the Bill allows consistency with the changes being introduced to the Scheme in England and Wales, and the Scheme in Scotland.

**16. Clause 3: Emergency arrangements concerning practitioners:
Scotland**

146. The Scottish Ministers are seeking provisions which would create a limited exception to the requirement to be on a performers list in order to practise as GP in the NHS in Scotland. The operation of the performers lists is ordinarily achieved by regulations made under the National Health Service (Scotland) Act 1978. The operation of the NHS in Scotland, including requirements which apply to those who work for the NHS in Scotland, is a devolved matter falling within the legislative competence of the Scottish Parliament. It is therefore appropriate to seek the Parliament's view on the inclusion of these provisions in UK legislation.

147. The Scottish Ministers could also have achieved this effect by regulations. This was considered, but it was decided that the provision should be made in the Bill and commenced by regulations made under the Bill. This will allow these provisions on the performers lists to take effect at the same time as other provisions to which they are complementary.

**17. Clause 23: Power to require information relating to food supply chains
Clause 24: Authorities which may require information
Clause 25: Restrictions on use and disclosure of information
Clause 26: Enforcement of requirement to provide information
Clause 27: Meaning of "food supply chain" and related expressions
Schedule 14 – information relating to food supply chains: financial penalties**

148. These clauses provide powers for the Scottish Ministers to require the provision of information relating to food supply chains. They also permit the Secretary of State with the consent of the Scottish Ministers to require the provision of information in relation to devolved matters.

149. Food supply is a devolved matter, and the Scottish Parliament could have legislated for the inclusion of these clauses, insofar as they allow the Scottish Ministers to impose requirements. However, given the interlinking nature of food supply chains in the UK and the difficulties which retailers may face in distinguishing between Scottish and UK information, it was considered preferable to include provision in a UK-wide Bill. The Scottish Government is recommending consent to these provisions, on the basis that this approach should reduce the burden on those involved in the food supply chain, should the power be exercised.

**18. Clause 47 and schedule 18: Health Protection Regulations:
Scotland**

150. The regulation-making powers in schedule 18 are necessary to ensure that the Scottish Ministers can make such regulations, including emergency regulations, as

may be required to respond to a coronavirus outbreak. They also ensure the Scottish Ministers have powers which are consistent with powers across the rest of the UK. The powers have a devolved purpose as they relate to public health.

151. It is considered necessary to make this provision in the Bill, subject to the consent of the Parliament, rather than any other route due to (a) the timescales involved in ensuring these powers are in place in time to respond to a significant outbreak, and (b) the benefits of taking a consistent UK-wide approach to the response. A significant aspect of the policy considerations in relation to these provisions has been to ensure, insofar as is appropriate, consistency with powers being introduced in other parts of the United Kingdom.

**19. Clause 21: Appointment of temporary Judicial Commissioners
Clause 22: Time limits in relation to urgent warrants etc. under
Investigatory Powers Act**

152. Ordinarily, the process for appointing Judicial Commissioners requires the Prime Minister to consult with the Scottish Ministers. Regulations made under this clause will enable the Investigatory Powers Commissioner to appoint temporary Commissioners to carry out the functions of Judicial Commissioners under various Acts, including the Regulation of Investigatory Powers (Scotland) Act 2000 and the Investigatory Powers Act 2016. The process for appointing temporary Commissioners will not require consultation with the Scottish Ministers, meaning that this clause requires the consent of the Scottish Parliament as it affects the executive competence of the Scottish Ministers.

153. As targeted interception warrants issued by the Scottish Ministers are subject to oversight by the Judicial Commissioners, this clause requires the consent of the Scottish Parliament as it effects the oversight of the Scottish Ministers' executive functions.

154. In addition, the clause caters for appointments to cover oversight functions of activity undertaken by Scottish Public Authorities under the Regulation of Investigatory Powers (Scotland) Act 2000, the Investigatory Powers Act 2000 and the Police Act 1997. This activity will relate to devolved purposes (such as the prevention and detection of crime) and thus also requires the consent of the Scottish Parliament.

155. This clause requires the consent of the Scottish Parliament because it relates to the functions of the Scottish Ministers in relation to the issuing of warrants under the Investigatory Powers Act 2016.

156. These clauses continue to provide consistency on these arrangements across the UK jurisdictions.

Consultation

157. There has been no public consultation on development of the provisions that relate to devolved matters in the Bill or by the UK Government and other devolved administrations on the Bill overall, due to the extremely tight timescales in which the Bill has had to be prepared and the sensitivity of provisions being developed in

response to the emerging situation. Now the Bill has been introduced, officials and Ministers will be able to more fully engage with key partners and stakeholder groups, and this will be a key part of implementation of its provisions.

Financial implications

158. Some of the measures set out in the Bill, if implemented, would have associated financial implications. Due to the ongoing uncertainty surrounding the impact and response to the current COVID-19 outbreak, including the question of how each of the powers in the Bill will ultimately need be used, it is not possible to provide an accurate assessment of the overall financial implications at this stage. Work is ongoing to identify areas where financial implications may arise and to produce estimates of costs based on broad assumptions. These assumptions act as a guide and are highly susceptible to change. The situation continues to develop rapidly and financial assessments will be updated in step with wider preparations and response.

159. As per the UK Government's 2020 Budget, funding has been set aside to support the COVID-19 response. The Scottish Government is continuing to liaise with HM Treasury and expects to receive a share of these monies, with all COVID-19 consequentials to be earmarked to tackle to outbreak.

Conclusion

160. It is the view of the Scottish Government that it is preferable in terms of ensuring that government and public bodies have powers expediently to respond to the current COVID-19 pandemic that the relevant provisions of the Coronavirus Bill which fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers should be considered by the UK Parliament.

Draft Legislative Consent Motion

161. The draft motion, which will be lodged by the Cabinet Secretary for Constitution, Europe and External Affairs and supported by the Cabinet Secretary for Health and Sport, is:

“That the Parliament agrees that the relevant provisions of the Coronavirus Bill, introduced in the House of Commons on 19 March 2020, so far as they fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

SCOTTISH GOVERNMENT
March 2020

*This Legislative Consent Memorandum relates to the Coronavirus Bill (UK legislation)
and was lodged with the Scottish Parliament on 20 March 2020*

CORONAVIRUS BILL – LEGISLATIVE CONSENT MEMORANDUM

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