



Law Society
of Scotland

Stage 1 briefing

Coronavirus (Scotland) (No. 2) Bill

12 May 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Public Policy committee, and its' sub-committees, including Charity Law, Criminal Law, Mental Health and Disability and Trusts and Succession, have considered the provisions of the Coronavirus (Scotland) (No. 2) Bill, and have the following comments to put forward for consideration at stage 1. We also provided oral evidence on the Bill to the Covid-19 committee of the Scottish Parliament on 12 May 2020¹.

General comments

We outlined our views around the principles for a legislative approach to responding to the current health crisis in our response to the Coronavirus (Scotland) Bill in March 2020². The World Health Organisation (WHO) stated that "countries must take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimise impact". At a media briefing on 11 March 2020, WHO's Director General, Tedros Adhanom Ghebreyesus said. "We're in this together, to do the right things with calm and protect the citizens of the world."

Crucial to such an approach is to keep people safe in the Scottish legal system, protect the rule of law and the interests of justice, ensure that access to justice remains available and that the fundamental protections for people across Scotland through our framework of equality and human rights laws, are maintained. In a crisis of this scale, it is even more important that these aims are upheld. Compliance with ECHR means that legislative change must be lawful, necessary, proportionate, time-limited and non-discriminatory

We welcome the respect for human rights in the Policy Memorandum and we highlight some particular features. Provisions in the Bill engage the European Convention on Human Rights (ECHR) in a number of respects including Article 5 ECHR which asserts the right to liberty and security of the person and that no

¹ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/114991.aspx>

² <https://Sectwww.lawsco.org.uk/media/368600/200331-coronavirus-scotland-bill-briefing.pdf>

one should be deprived of liberty except in accordance with a lawful procedure (Art 5(1)(e)) and Article 6 (right to a fair trial). Provisions in the Bill engage Article 8 (Right to respect for private and family life) and Article 1 of Protocol No. 1 (protection of property) and Article 14 (protection from discrimination). The Scotland Act 1998 provides that Legislative and Executive competence require compliance with Convention rights contained in the ECHR. When legislating for emergency laws, it is even more important to take care that such compliance is satisfied. The Human Rights Act 1998 applies to the acts of public authorities under the Bill, e.g. the Scottish Courts and Tribunals Service and we encourage public authorities which undertake coronavirus functions to ensure that compliance with Convention rights. We expect that human rights and the rule of law will be fully respected when applying the provisions of the coronavirus legislation.

We also wish to ensure that scrutiny of legislation is carried out properly and that Government is held to appropriate account. The Bill is following an expedited procedure in the Scottish Parliament. This enables Parliamentary scrutiny of the bill to be significantly curtailed. Stage 1 debate is scheduled for tomorrow with Stage 2 on 19 May and Stage 3 on 20 May. This is a short period for scrutiny, though it is more generous than that which applied to either the Coronavirus Act 2020 or the Coronavirus (Scotland) Act 2020.

This compressed timetable and many of the provisions in the bill would, in other circumstances, be criticised heavily but we take the view that they may be justified by reference to the current emergency. Nevertheless, the obligation to make good law - that is clear, effective and accessible - remains. This means that there should be close post-legislative scrutiny of how the Act works in practice and we agree with the creation of the Covid-19 Committee as part of the Parliamentary mechanism, to ensure that scrutiny will take place in a searching and comprehensive manner. We also welcome the inquiry mounted by the Equality and Human Rights Committee.

The supporting provisions contain many regulation making powers and we highlight the use of 'made affirmative' regulations. These are SSSIs which are subject to a fast-track procedure which has been criticised by the House of Lords Constitution Committee in its report on legislation making powers³:

"134. The made affirmative procedure is often used in Acts where the intention is to allow significant powers to be exercised quickly. It is a kind of "fast-track" secondary legislation. In most cases the parent Act specifies which form of procedure should be applied to instruments made under it. In some cases however the Act may provide for either the draft affirmative or the made affirmative procedure to be used. If the made affirmative procedure is used then the instrument is effective immediately.

135. Instruments laid as made instruments almost inevitably place a serious time pressure on those drafting them. The JCSI's 8th report of this session drew the special attention of both Houses to three statutory instruments which had been laid as made affirmatives. In its memorandum to the JCSI, Her Majesty's Treasury explained that the process "had inevitably placed serious time

³ <https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/11607.htm>

pressure" on them and that "revisions were being made to the terms of the instruments down to the moment that they were made."

We have provided detailed comments on sections and schedules of the Bill in the annex to this paper. Many of the provisions in the current Bill particularly around subordinate legislation powers, commencement and expiry, are the same or similar to the previous Coronavirus (Scotland) Act 2020 and we reiterate the views expressed during the passage of that legislation. Around the provisions distinct to this Bill, we highlight the following:

- Bankruptcy - we support the measures introduced to reform bankruptcy proceedings. Many people are currently in significant financial difficulty, and we believe that these reforms will assist debtors through the current crisis.
- Criminal justice – extension of time periods – the Coronavirus (Scotland) Act 2020 made changes to several time periods, and this Bill has identified additional areas that require change. Some of these measures do not specify a fixed time period and we believe that it is important that they do so, to provide clarity and ensure compliance with human rights.
- Criminal justice – custody arrangements - we support these measures on the basis that otherwise there would be a need for Police Officers to carry out the duties required to operate the video-linked custody courts. The change in this Bill will minimise the movement of persons and free up the police resources for front line duties. We note that arrangements for police interviews are being considered more generally through a recently-announced working group and support any steps taken from that work to ensure the health and safety of all involved, including not only the police, the suspect and solicitor, but also interpreters, appropriate adults and others.
- Criminal justice – undertakings – we support this change in so far as providing that a warrant should not be taken where the accused has been in touch with a solicitor or the court indicating that they cannot for reasons related to COVID-19 appear in person in response to the undertaking.
- Proceeds of crime – we support the change to allow exceptional circumstances to include the effect (whether direct or indirect) of coronavirus on the proceedings.
- Intimation of documents – we support the changes proposed to notification processes, particularly for commissary work. It is important, though, that online publication is effective and accessible.
- Reports under the Climate Change (Scotland) Act 2009 – we recognise the practical challenges of reporting requirements under the 2009 Act, though have highlighted the potential impact on organisations such as SEPA and Marine Scotland. We recognise the challenges around any citizens assembly during the current health crisis, though suggest that a date could be set in legislation to ensure that this activity is taken forward when practicable to do so.
- Listed buildings and conservation areas – we had previously highlighted challenges around listed building consents and time periods through the current crisis and welcome the changes in the Bill.
- Land and Buildings Transaction Tax – we support these provisions, which will allow adjustments to be made depending on the state of the property market through the current crisis. We note that the Bill also provides for Scottish Ministers to amend the definition of emergency and extended periods by regulations. This would appear to be appropriate given the current uncertainty as to how long existing guidance on the cessation of construction work and the restrictions relating to coronavirus will require to remain in place.

- UEFA European Championship – we are concerned around the use of legislation of this type to address issues around ticket touting and have also suggested amendment to more accurately reflect charity law in Scotland (particularly the treatment of public benefit under the Charity and Trustee Investment (Scotland) Act 2005).

Annex

Section 1: Meaning of “coronavirus”

This section is the same as for the Coronavirus (Scotland) Bill and we have no comment to make.

Section 2: Protection of the individual

Section 2 refers to several reforms contained in Schedule 1 to the Bill, about the protection of the individual, and our comments on the parts of the Schedule are:

Schedule 1 – Protection of the individual

Part 1: Student Residential Tenancy

We are supportive of these proposals, though believe 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*.
- 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).

Part 2: Carers Allowance supplement

We have no comment on this Part.

Part 3: Bankruptcy

Paragraph 56 of the Bill’s Policy Memorandum recognises that COVID-19 “has already caused, and will continue to cause, significant economic hardship to large numbers of individuals and smaller businesses.”

Overall, Schedule 1 Part 3 of the Bill makes several changes designed at easing the pressure on debtors which we broadly support. Debtors are now facing unexpected and unsustainable levels of debt and

financial hardship. The changes being introduced include the reduction of the minimum amount of debtor application fees to make certain applications (section 11) and an increase in the thresholds to take account of the financial criteria for minimal asset process and “qualified creditor” (sections 6 and 7) both seem appropriate in the circumstances. This will allow the courts and the Accountant in Bankruptcy to focus their activities where creditors are pursuing higher level of debts while still preserving the creditors’ right of action at a later stage.

This frees up time and resources, when these are constrained by the need for holding business remotely. Similarly, the introduction of virtual holding meetings (section 9) and the introduction of electronic signature (section 10) allow for the need for social distancing to be respected.

What is important is that, once the pandemic emergency ends that these changes are treated as interim measures rather than any permanent increase without the need to carry out further scrutiny (as set out in Paragraph 71 of the Bill’s Policy Memorandum).

Clarification may be helpful, to confirm that a recipient and/or an appointee (attorney, intervener, guardian) may direct that a document be sent electronically to the appointee. For the proposed section 26(b)(iii) to the Interpretation and Legislative Reform (Scotland) Act 2010, we also highlight, in the context of willingness to receive a document being “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 potential for a significant intervening illness or disability. In the current crisis, we believe that this should be considered as a potential factor.;

Part 4: Mental health

This part modifies the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 which relate to the nomination of a named person. This paragraph provides that the nominated person’s signature will no longer require to be witnessed by a prescribed person.

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. It is important that individuals remain able to nominate a named person, subject to appropriate safeguards, and that this nomination is recognised.

Section 3: Operation of the justice system

Section 3 refers to several reforms contained in Schedule 2 to the Bill, about the operation of the justice system, and our comments on the parts of the Schedule are:

Schedule 2 – Operation of the justice system

Part 1 —Criminal justice

Part 1 paragraph 1 of the Schedule relates to the extension of time periods

The time periods in legislation are aimed at reducing undue delays in criminal proceedings to ensure that there is a balance maintained between fairness to the accused in avoiding long drawn out proceedings while respecting the interests of the State to prosecute.

The Coronavirus (Scotland) Act 2020 has already made changes to various time-limits to take account of the impact of coronavirus, which reduced the number of times that cases would need to call to be adjourned and for appearances by parties. This respects the need “to ensure the efficient operation of court business during the coronavirus outbreak, particularly to ensure that court business can be conducted in a way which will minimise unnecessary travel and gatherings of people.”⁴

The Bill has identified the need for some additional extensions to various time periods where we would comment as follows:

Schedule 2 paragraph 1(2) and (3) of the Bill concern an extension regarding Continuances without Plea (Sections 145(3) and 145A (3) of the 1995 Act). It removes the 28-day limit in circumstances where the accused has been released on bail or ordained to appear. This seems unobjectionable. Importantly for those remanded in custody, there is no change to the time period of 21 days remains.

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 (breach of certain orders: adjourning hearing and remanding in custody etc) where the court shall not so adjourn a hearing for any single period exceeding four weeks or, on cause shown, eight weeks.

Currently where an offender appears before the court in respect of their apparent failure to comply with a requirement of a community payback order, drug treatment and testing order or restriction of liberty order, the court may adjourn the hearing, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the offender. Section 245J (2) of the 1995 Act provides that the court may remand or bail the offender or ordain them to appear at the adjourned hearing.

We would suggest that there should be a finite period specified for those in remanded in custody and should not remain open ended.

Schedule 2 paragraph 1(4) of the Bill concerns section 200(1) of the 1995 Act that provides the court with a power to remand an offender for inquiry into physical or mental condition) This deals with cases where the court finds that an accused has committed an offence punishable with imprisonment and it appears to the court that, before the method of dealing with him is determined, an inquiry ought to be made into his physical or mental condition.

⁴ Paragraph 103 of the Bill's Policy Memorandum

Section 200(2) of the 1995 Act provides that the court may remand the offender in custody or on bail (or in hospital where the court believes the offender appears to be suffering from a mental disorder) pending sentencing, to allow an inquiry into the offender's physical or mental condition. The court may adjourn the case "for such period or periods, no single period exceeding three weeks, as the court thinks necessary to enable a medical examination and report to be made." Section 200(3) provides the same in relation to an extension of a period of remand in hospital, but subject to the condition that the court continues to be satisfied on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder.

The intention is to remove the time limits specified at sections 200(2) and 200(3) and provide that the court may adjourn a case for such a period as it considers appropriate. We have a concern around this proposal, as it deals with the restriction of liberty and we would suggest that this is amended to specify include a finite period as well.

Schedule 2 paragraph 2 of the Schedule relates to the arrangements for the custody of persons detained at police stations

We understand that these changes are required as there is no statutory basis for Prisoner Custody Officers to work within custody hubs managed by Police Scotland. As part of the operational response to the outbreak, first appearances from custody are being managed by way of video links between the police stations and courts. Though remote hearings can take place, changes are required to section 102 (2) of the Criminal Justice and Public Order Act 1994 to allow for the safe and continued administration of criminal justice and to minimise the need to transport detained persons between police custody and courts.

We support the basis of these changes as otherwise there would be a need for Police Officers to carry out the duties required to operate the video-linked custody courts. This change will minimise the movement of persons and free up the police resources for front line duties.

Schedule 2 paragraph 4 should refer to section 64(2)(b) and (c) of the Criminal Justice (Scotland) Act 2016.

Undertakings and the PCUs included in Schedule 2 of the Bill are a part of the important process of dealing with suspects from the time of their detention in police stations. We highlight the need to ensure that the processes at the police station are safe and respect the Scottish Government health advice for all involved requiring social distancing. That need for safety is paramount and includes the suspect, the police officers and those there in support of the suspect including solicitors and where relevant, any Appropriate Adult and/or interpreter. This is fundamental to the Scottish criminal justice system in considering questions of fairness as according to European jurisprudence, the trial starts at the police station. The detention and interviews of suspects from that point must be in accordance to the provisions of the 2016 Act as must all court processes that follow which underpin any trial that is to be held.

We understand that the Scottish Government is taking this work forward by means of a Working Group to consider how best to secure the safe operation of police station procedures including legal advice. This

includes the possible accommodating remote access for solicitors providing advice which we would fully support and urge early technical and if required legislative support.

Schedule 2 paragraph 6 relates the expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016

The change enables the continuation of undertakings given under section 25(2)(a) of the 2016 Act where an accused fails to appear to answer the undertaking at first instance and the information provided at that hearing is the reason for the accused's failure to appear is related to COVID – 19. This change is reasonable in so far as providing that a warrant should not be taken where the accused has been in touch with a solicitor or the court indicating that they cannot for reasons related to COVID-19 appear in person in response to the undertaking.

There is a need to ensure if proposed by a solicitor on behalf of his client on that date at the for a right to have the court consider and vary any conditions that may have been imposed by the police in issuing the undertaking. This would present the first opportunity for the imposition of such conditions to be reviewed by the court. As the Crown can modify the conditions imposed on an undertaking in terms of section 27 of the 2016 Act, we consider that the accused should have a similar right to bring the matter before the court.

Schedule 2 paragraph 6(3) inserts a new section 29A into the Criminal Justice (Scotland) Act 2016. We seek clarification of the use of the word "time" in proposed section 29A. We would have considered that "date" might have been more appropriate.

We highlight at paragraph 6(3) the having of a "coronavirus-related reason" for non-appearance in court in accordance with an undertaking. As noted previously, clarification on whether a mental health condition attributable to the pandemic a "coronavirus-related reason" would be helpful.

Part 2 —Proceeds of crime

We support the changes in paragraphs 7 and 8 in relation to the Proceeds of Crime Act 2002. The purpose of such changes are to ensure that certain provisions relating to the periods of confiscation orders and for payment are modified in favour of the person who is affected by such orders to allow for confiscation proceedings to be postponed where they have been affected by coronavirus so that in terms of section 99 (4) of the 2002 Act, exceptional circumstances will include the effect (whether direct or indirect) of coronavirus on the proceedings.

Part 3 —Intimation, etc. of documents

Schedule 2, paragraph 9 inserts provision into the Coronavirus (Scotland) Act 2020 which has the effect that “where there is provision requiring or permitting a document to be displayed on the walls (or any other part) of a court building, or to be made publicly available within a court, that is instead to be done by publication of the document on the Scottish Courts and Tribunals Service (“SCTS”) website.”⁵

We are supportive of this legislative change in the current circumstances and recognise the practical benefits that such a measure will achieve, particularly to allow commissary business to continue to function while some Sheriff Courts are closed.

We consider it important to bear in mind the reasons why papers have been traditionally displayed on the walls of court. It is important that the documents displayed digitally on the SCTS website are done so with sufficient prominence, to be clearly visible and capable of being easily located by members of the public, solicitors and other interested parties. In the context of commissary matters, we consider that there would also be merit in updating other relevant guidance, such as the ‘What to do after a death in Scotland’ publication, to reflect the legislative changes and draw these to the attention of the public.”

More widely, the use of electronic signatures on documents relating to court proceedings has been the subject of discussion for some time. Although included as one of several temporary measures, it appears that the documents included are only those produced by the court. This provision should be extended to include all documents to be lodged with the Court by parties - in criminal and civil cases - including, for example, special defences, notices and written submissions (in appeals). This is clearly appropriate given the stated aim of these provisions, namely “to minimise the requirement for court personnel, officers of court and legal practitioners acting on behalf of parties to proceedings to be physically in contact or on justice premises and ... allow justice organisations the flexibility they require properly to prepare for a possible escalated health response.”

Section 4: Reports, accounts and other documents

Section 4 refers to several reforms contained in Schedule 3 to the Bill, about reports, accounts and other documents, and our comments on the parts of the Schedule are:

Part 1: Reports, etc. under the Climate Change (Scotland) Act 2009

The provisions of this paragraph amend the Climate Change (Scotland) Act 2009 by:

- amending the date by which Scottish Ministers are required to have created a nitrogen balance sheet as set out in section 8A(1) of the 2009 Act. The Bill changes this date from 18 months to 24 months after the coming into force of section 8A of the 2009 Act, and

⁵ Explanatory notes, paragraph 69

- amending the date by which a citizens assembly on climate change is required to have completed its deliberations and reported to the Scottish Parliament and the Scottish Ministers, by providing that if the citizens assembly is unable to complete these functions by 28 February 2021 due to coronavirus, then it must do so as soon as reasonably practicable after that date (amending section 32A(10) of the 2009 Act).

In relation to the provisions concerning the nitrogen balance sheet, we recognise the difficulties arising in connection with reprioritisation of work as a result of coronavirus. However, we suggest that there needs to be consideration as to how any delay in the creation of a nitrogen balance sheet will impact the ongoing work of organisations such as SEPA (for example, in relation to watercourses and groundwater which is feeding into the way in which limits in revised waste management permits are set, and in relation to matters such as regulation of water discharge, emissions to air and pollution prevention and control (PPC) activities) and Marine Scotland and other organisations who are dealing with matters such as coastal erosion.

In connection with amending the date relating to citizens assembly, we recognise the challenges with this work, particularly considering current guidance around public gatherings. We consider it would be preferable to have a maximum time limit set out in the Bill so that this work does not sit in abeyance.

Part 2: Accounts of registered social landlords

We do not have comments on these reforms.

Part 3: Accounts under the Public Finance and Accountability (Scotland) Act 2000

We do not have comments on these reforms.

Part 4: Housing (Scotland) Act 1987: statement under section 33B

We do not have comments on these reforms.

Section 5: Other measures in response to coronavirus

Section 5 refers to several reforms contained in Schedule 4 to the Bill, about other measures in response to coronavirus, and our comments on the parts of the Schedule are:

Part 1: UEFA European Championship

The reforms in Schedule 4 Part 1 UEFA European Championship principally relate to the changes which are required on account of the delay to these championships due to the COVID-19 pandemic emergency. Paragraph 1(2) of the Bill seems reasonable and takes account of the change in the date.

However, paragraphs 1(3) and (4) of the Bill relate to matters unconnected with the COVID-19. Though we can understand why there is a legislative opportunity being taken to fix an exception to the ticket touting offence so that it complies with the European Convention on Human Rights, we would question why emergency provisions and accelerated parliamentary procedures should be deployed for the purpose of including this kind of amendment and not affording this the usual parliamentary scrutiny. This is especially pertinent when there is adequate time as the UEFA championships are not being held until 2021 at the earliest.

Section 3 of the UEFA European Championship (Scotland) Act 2020 currently provides an exception from the ticket touting offence where an auction of a match ticket is conducted by a charity, or by a person other than a charity and the proceeds are donated to a charity based in the UK or the EU. The Bill removes the requirement that the charity is to be based in the UK or in a Member State of the EU. However it now seeks to require that a charity for these purposes is either registered in the Scottish Charity Register, or in an equivalent charity register, or where there is no charity register in the relevant country then the body's purposes consist only of one or more of the charitable purposes set out in section 7(2) of the Charities and Trustee Investments (Scotland) Act 2005 and the body provides public benefit within section 8 of that Act.

We would also suggest amendment to the proposed new section 3(4)(b) of the UEFA European Championship (Sc) Act 2020 as amended. Rather than "(b) the body provides public benefit within the meaning given by section 8 of that Act", we would suggest "(b) the body provides public benefit in accordance with section 8 of that Act".

The reason is that section 8 of the 2005 Act does not 'give a meaning' of public benefit. Public benefit is not defined anywhere in the Act. Section 8 sets out certain matters to be taken into account by whoever is assessing whether a body provides public benefit. Normally that would be OSCR, subject to the appeal provisions to the Scottish Tribunals and Court of Session, but in this context it would be the enforcement officers or police officers referred to in the additional information published by the Scottish Government in February 2020 on "Action to ensure compliance with the European Convention on Human Rights". In effect, these officers are being commissioned to carry out an OSCR-style assessment of whether a body conducting an auction and falling prima facie under this part of the 'charities' exception does in fact provide public benefit, and they must do so, like OSCR, in accordance with the provisions of section 8.

We question how well equipped the relevant enforcement officers will be to police these matters effectively. The Scottish Government "considers that it should be enforcement officers (who will be local authority employees), or police officers who should make the judgement about whether an organisation meets the definition of being a charity" and apparently Glasgow City Council and Police Scotland appear confident that they can oversee the process. However, an assessment of compliance with the charity test and the public benefit test would not form a normal part of their activity and it is not clear how they will be expected

to acquire the relevant skills and expertise to allow them to manage this process effectively. We understand that UEFA may still require to agree to the transferability of a ticket so it appears to us that there is no urgency for this measure to be included in coronavirus legislation, particularly in the absence of more detailed consideration as to how the matters covered by the legislation are to be effectively policed and given the risk that a body which would fail the charity test could benefit as a result of an inadequate process being implemented.

Part 2: Listed buildings and conservation areas: consents

Schedule 4, paragraph 2 concerns the extension of the period of listed building consent (LBC) and conservation area consent (CAC). We welcome these provisions in the current circumstances. We previously noted that LBCs could face such difficulties and called for an extension to be considered⁶.

The Bill has the effect of extending the duration of LBCs and CACs that are due to lapse during the emergency period (set out in the Bill as being the period beginning with the coming into force of these provisions and ending on 6 October 2020). Such consents will instead lapse at the end of an extended period, ending on 6 April 2021, unless works permitted by the LBC or CAC have commenced before the end of the extended period.

The extension of these consents under the Bill will bring them into line with other planning permissions (planning permission and planning permission in principle) which were similarly extended under the Coronavirus (Scotland) Act 2020, Schedule 7, paragraphs 8-10.

We note that the Bill also provides for Scottish Ministers to amend the definition of emergency and extended periods by regulations. This would appear to be appropriate given the current uncertainty as to how long existing guidance on the cessation of construction work and the restrictions relating to Coronavirus will require to remain in place.

Part 3: Registers kept by the Keeper of the Registers of Scotland

We do not have comments on these reforms.

Part 4: Land and buildings transaction tax: additional amount

We welcome the provisions of schedule 4, paragraph 5 of the Bill which concerns amendments to the existing legislation on the land and buildings transaction tax 4% additional dwelling supplement (ADS) to

⁶ <https://www.lawscot.org.uk/media/368600/200331-coronavirus-scotland-bill-briefing.pdf>

allow people who bought a new house between 24 September 2018 and 24 March 2020 and paid ADS on that purchase to reclaim the ADS if they sell their old house within 27 months, rather than 18 months (which is the current position). The existing provisions on ADS are found in Schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013.

Paragraph 5(3) of the Bill amends the 2013 Act by extending the time period within which a previous main residence can be sold, and ADS paid on the purchase of a new main residence can be claimed. The period for disposal set out in the existing legislation is 18 months. The Bill provides that an extended period of 27 months for disposal of the previous main residence will apply where the effective date of the purchase of the new main residence (normally the date the purchase completed) was between 24 September 2018 and 24 March 2020. This allows those who paid ADS on purchases completing during that period additional time to dispose of their previous main residence and reclaim the ADS. We consider that this legislative change is appropriate in the current circumstances by recognising the effects of coronavirus on the property market generally and the practical and procedural difficulties faced by those who seek to market and sell their property.

Paragraph 5(3)(b) seeks to make further changes to existing legislation to provide a power for Scottish Ministers to extend by order, the period of 27 months and the period from 24 September 2018 to 24 March 2020. The Bill provides that these powers may only be exercised where the Scottish Ministers are satisfied that it is appropriate to make the order for a reason related to coronavirus. We are supportive of these provisions which will allow Scottish Ministers to continue to keep under review the state of the property market and the challenges faced by those seeking to sell property, and make adjustments to extend the periods provided for in these provisions if that is considered appropriate.

Part 5: Non-domestic rates relief

We have no comments on this reform.

Section 6: Advancement of equality and non-discrimination

Section 6 of the Bill is in the same terms as section 9 of the Coronavirus (Scotland) Act 2020. Section 9 had been introduced as an amendment during parliamentary scrutiny in April 2020 to ensure that any legislative response reflected mainstreaming obligations under the Equality Act 2010 and did not deter action to address gender inequality despite the current health crisis.

Issues around equality and human rights are always crucial – and are included in our own regulatory objectives. In a crisis of this scale, protecting people's rights becomes more important still, ensuring that nobody is left behind and that we demonstrate solidarity as a society.

Section 7: Subordinate legislation making powers

Section 7 of the Bill is in the same terms as section 10 of the Coronavirus (Scotland) Act 2020, providing wide powers to Scottish Ministers to introduce subordinate legislation.

Section 8: Power to suspend and revive provisions

Section 8 is in substantially the same terms as Section 11 of the Coronavirus (Scotland) Act 2020 providing for the power to suspend and revive provisions in Part 1 of the bill.

Section 9: Expiry

Section 9 is in substantially the same terms as Section 12 of the Coronavirus (Scotland) Act 2020 providing for the automatic expiry of Part 1 of the bill.

Section 10: Power to bring forward expiry

Section 10 is in substantially the same terms as Section 13 of the Coronavirus (Scotland) Act 2020 providing for the power to bring forward expiry of Part 1 of the bill.

Section 11: Power to amend Act in consequence of amendments to subordinate legislation

Section 11 is in substantially the same terms as Section 14 of the Coronavirus (Scotland) Act 2020 providing for the power to amend the bill in consequence of amendments to subordinate legislation.

Section 12: Reports by the Scottish Ministers on the status of provisions

Section 12 is in substantially the same terms as Section 15 of the Coronavirus (Scotland) Act 2020 and the Coronavirus Act 2020 providing for reports by Ministers on the status of provisions. This is an important provision in the context of review by Ministers of regulations made under the bill. In the bill and in the Coronavirus (Scotland) Act 2020 the review is to take place with a view to considering whether those provisions remain *necessary*. This is distinct from Coronavirus Act 2020 the review is to take place with a view to considering whether those provisions remain *appropriate*.

Section 13: Ancillary provision

We have no comments to make.

Section 14: Commencement

We have no comments to make.

Section 15: Short title

We have no comments to make.



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