



Law Society
of Scotland

Consultation response

Scottish Government COVID-19 guidance
improvement project

November 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.

We welcome the opportunity to respond to the Scottish Government's *COVID-19 guidance improvement project*¹. We have the following comments to put forward for consideration.

General comments

Inevitably this has been a fast moving and changing environment with the development of a large volume of coronavirus legislation. The changing landscape has resulted in policy and legal changes being made by numerous sets of regulations which have generally been laid at short notice before legal changes take effect. In such circumstances, guidance has not always been made available contemporaneously with the legislation. We also recognise that there are examples of guidance which has been issued which does not have a legislative basis and has required regular updating to align with Scottish Government policy.

It is important that the law is clear and understandable so that people can guide their conduct accordingly. Given the complexity and nuanced nature of some of the regulations, guidance has, and continues to be, essential. Guidance is vital to support individuals and businesses in their understanding of both the legal position and Scottish Government advice, and for solicitors to be able to advise clients fully on the law and its implications. Clear guidance is also important for those who need to enforce the legislation, such as Police Scotland.

Guidance is particularly relevant in the context of criminal law. Individuals and businesses should not be subject to criminal law penalties, including fixed penalties, without understanding exactly how and why they have breached the law. If the regulations require or benefit from accompanying guidance, it is important that this guidance is easily accessible and in terms which can be readily understood. While delays in the

¹ <https://consult.gov.scot/digital-communications/388883c2/>

publication of guidance have been understandable, we suggest that this needs to be carefully managed so that guidance and regulations are published simultaneously.

Where guidance is supported by or relates to legislative provisions, it would be of great assistance if the guidance clearly linked to the relevant legislation so that it is easily accessible and can be readily located. At present, there are a number of instances where it is not immediately clear from guidance where legislation is in place to support the content found in the guidance. Given the considerable volume of coronavirus legislation which has been passed, it may be challenging to locate specific legal provisions within the body of law.

In addition, it is important that the guidance is communicated in a way which is consistent with relevant regulations in order to ensure clarity and certainty as to the law. For example, during the early stages of the pandemic, Ministers referred to “time-limited exercise” although there was no time limit set out in the regulations. This is confusing for the public.

We consider that it is also important for the public to be able to understand how areas of guidance are evolving and for references to outdated guidance to be removed. We recognise that this requires care to be taken to cross referencing between guidance. Where guidance has been published in response to coronavirus, it is important that it is made clear whether this guidance replaces or supplements any existing guidance. Where coronavirus guidance is intended to supplement existing guidance, there should be clear cross-referencing to ensure that those using such guidance are able to understand it in the context of all current operational guidance including pre-pandemic guidance.

Accessibility

Guidance in this area has to be accessible to all in Scotland, particularly where a failure to comply can result in breaching regulations and criminal sanctions. This means that it should be readily available in different formats, languages, be clear and use easily understood terminology. Where the guidance is written in English, it should use plain English.

While technology can do much to meet these needs by ensuring that automatic translation and read-aloud services are available where the guidance is published on-line, reliance on publishing guidance on-line does not meet the needs of all. Many within Scotland do not have access to on-line resources and their needs also have to be met. This is particularly critical for those who are vulnerable and/or are required to shield and may not be able to access help from others like family members and friends. When guidance is updated and published, consideration should be given to how vulnerable people access advice, including by circulating physical materials such as leaflets, and how they will be supported (where that is necessary) to understand and comply. Where people access help from third party agencies, consideration should be given to ensuring that those services are fully briefed and supported to assist. The overall aim should include ensuring that where guidance is relevant to anyone in any of the categories of disabilities (physical, sensory, mental or intellectual) it reaches them, in such forms and/or with such support as may be necessary to enable them to understand and comply.

Any written materials, such as leaflets, need to be short, in plain English and easy to understand.

Disabled persons organisations (for example, Inclusion Scotland and Disability Equality Scotland) should be consulted over the distribution of the guidance to disabled people. We also suggest that the Mobility and Access Committee for Scotland should also be consulted.

For further information, please contact:

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