

# Coronavirus (Recovery and Reform) (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:  
Explanatory Notes (SP Bill 9-EN), a Financial Memorandum (SP Bill 9-FM), a Policy  
Memorandum (SP Bill 9-PM), a Delegated Powers Memorandum (SP Bill 9-DPM) and  
statements on legislative competence (SP Bill 9-LC).**

# Coronavirus (Recovery and Reform) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about public health protection powers; to make provision about educational establishments and school consultations; to make miscellaneous public service reforms; to modify the law on tenancies; to make temporary modifications to the law in relation to the justice system; and for connected purposes.

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## PART 1

### PUBLIC HEALTH PROTECTION

#### CHAPTER 1

##### MODIFICATIONS OF THE PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

#### **1 Public health protection measures**

- 10 (1) The Public Health etc. (Scotland) Act 2008 is modified as follows.  
(2) After section 86 insert—

#### **“PART 5A**

##### PUBLIC HEALTH PROTECTION MEASURES

##### *Public health protection regulations*

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#### **86A Public health protection regulations**

- (1) The Scottish Ministers may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Scotland (whether from risks originating there or elsewhere).
- 20 (2) In subsection (1)—
- (a) reference to infection or contamination is a reference to infection or contamination which presents or could present significant harm to human health,

(b) reference to the spread of contamination includes a reference to the spread of any source of contamination.

(3) The power in subsection (1) may be exercised—

(a) in relation to infection or contamination generally or in relation to particular forms of infection or contamination, and

(b) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to particular circumstances.

(4) Regulations under subsection (1) may in particular include provision directly or indirectly 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 (but see sections 86B and 86C).

(5) The restrictions or requirements mentioned in subsection (4) include, for example—

(a) a requirement that a pupil (within the meaning given by section 135(1) of the Education (Scotland) Act 1980) is to be kept away from school,

(b) a prohibition or restriction relating to the holding of an event or gathering,

(c) a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains, and

(d) a special restriction or requirement (see section 86E).

**86B Limits on use of power: regulations directly imposing restrictions or requirements**

(1) Regulations under section 86A(1) may not impose a restriction or requirement by virtue of section 86A(4) unless the Scottish Ministers consider, when making the regulations, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.

(2) Regulations under section 86A(1) may not impose a restriction or requirement mentioned in section 86E(2)(a), (b), (c) or (d).

(3) For the purpose of this section, the regulations “impose” a restriction or requirement if the restriction or requirement is imposed directly by the regulations.

**86C Limits on use of power: regulations indirectly imposing restrictions or requirements**

(1) Regulations under section 86A(1) may not enable the imposition of a restriction or requirement by virtue of section 86A(4) unless the regulations provide that a decision to impose such a restriction or requirement may only be taken if the person taking it considers, when taking the decision, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.

- (2) Regulations under section 86A(1) may not enable the imposition of a special restriction or requirement unless—
- (a) the regulations are made in response to a serious and imminent threat to public health, or
  - (b) the imposition of the special restriction or requirement is expressed to be contingent on there being such a threat at the time when it is imposed.
- (3) For the purpose of this section, the regulations “enable the imposition of” a restriction or requirement if the restriction or requirement is imposed by virtue of a decision taken under the regulations by the Scottish Ministers, a local authority, a health board or other person.

#### **86D Exclusion of requirement to undergo medical treatment**

- (1) Regulations under section 86A(1) may not include provision requiring a person to undergo medical treatment.
- (2) “Medical treatment” includes vaccination and other prophylactic treatment.

#### **86E Special restrictions and requirements**

- (1) In this Part, a “special restriction or requirement” means a restriction or requirement mentioned in subsections (2) to (5).
- (2) In relation to a person, the restriction or requirement referred to in subsection (1) is that the person—
- (a) submit to medical examination,
  - (b) be removed to a hospital or other suitable establishment,
  - (c) be detained in a hospital or other suitable establishment,
  - (d) be kept in quarantine (within the meaning of section 39(4)),
  - (e) be disinfected or decontaminated,
  - (f) wear protective clothing,
  - (g) provide information or answer questions about the person’s health or other circumstances,
  - (h) has the person’s health monitored and the results reported,
  - (i) attend training or advice sessions on how to reduce the risk of infecting or contaminating others,
  - (j) be subject to restrictions as to where the person may go or with whom the person has contact,
  - (k) abstain from working or trading.
- (3) Where regulations enable the imposition of a requirement to submit to medical examination, section 35 applies to that examination in the same way as it applies to an examination authorised by virtue of an order under section 34(1).

- (4) In relation to a thing, the restriction or requirement referred to in subsection (1) is—
- (a) that the thing be seized or detained,
  - (b) that the thing be kept in quarantine,
  - (c) that the thing be disinfected or decontaminated,
  - (d) that the vector, agent or source of any infection or contamination be removed,
  - (e) in the case of a dead body, that the body be buried or cremated,
  - (f) in any other case, that the thing be destroyed or disposed of.
- (5) In relation to premises, the restriction or requirement referred to in subsection (1) is—
- (a) that the premises be closed,
  - (b) that, in the case of a vehicle or movable structure, the premises be detained,
  - (c) that the premises be disinfected or decontaminated,
  - (d) that the vector, agent or source of any infection or contamination be removed,
  - (e) that, in the case of a building, structure, mobile home or vehicle, the premises be destroyed.

#### **86F Further provision on content of regulations**

- (1) This section makes further provision about regulations under section 86A(1).
- (2) The regulations may—
- (a) confer functions on local authorities, health boards and other persons,
  - (b) make different provision for different areas,
  - (c) create offences,
  - (d) modify any enactment (including this Act),
  - (e) enable a court to order a person convicted of any offence under the regulations to take or pay for remedial action in appropriate circumstances,
  - (f) provide for the carrying out and enforcement of restrictions and requirements imposed by virtue of the regulations,
  - (g) provide for appeals from and reviews of restrictions and requirements imposed by virtue of the regulations,
  - (h) permit or prohibit the levying of charges,
  - (i) permit or require the payment of incentive payments and expenses,
  - (j) permit the payment of compensation,
  - (k) provide for the resolution of disputes.



- (3) The maximum penalties that may be imposed in relation to offences created under the regulations are—
- (a) on summary conviction, imprisonment for a period not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, imprisonment for a period not exceeding two years or a fine (or both).
- (4) The regulations must provide for a right of appeal to the sheriff against any decision taken under the regulations by virtue of which a special restriction or requirement is imposed on or in relation to a person, thing or premises.

### 86G Review of regulations

- (1) So long as regulations under section 86A(1) which make provision mentioned in section 86A(4) remain in effect, the Scottish Ministers must review the regulations—
- (a) before the end of the period of 21 days beginning with the date on which the regulations came into force, and
  - (b) before the end of each subsequent period of 21 days.
- (2) Subsection (3) applies where regulations under section 86A(1)—
- (a) enable a special restriction or requirement to be imposed by virtue of a decision taken under the regulations, and
  - (b) the restriction or requirement is capable of remaining in force in relation to any person, thing or premises for more than a specified period.
- (3) The regulations must provide that a specified person may require the continuation of the restriction or requirement to be reviewed in accordance with the regulations at specified intervals by a person determined in accordance with the regulations.
- (4) In relation to a special restriction or requirement mentioned in section 86E(2)(c) or (d)—
- (a) the period and intervals specified by virtue of subsection (2) must be 21 days or less, and
  - (b) the regulations must require the continuation of the restriction or requirement to be reviewed without an application being made.
- (5) In this section, “specified” means specified in the regulations.

#### *Public health monitoring measures*

### 86H Public health monitoring measures

The Scottish Ministers may by regulations make provision conferring on local authorities, health boards or other persons functions in relation to the monitoring of public health risks.”

- (3) In section 122 (regulations and orders)—
- (a) in subsection (5), after “25(3),” insert “86A(1),”,
  - (b) in subsection (6), after “25(3)” insert “, 86A(1)”.

## 2 International travel regulations

(1) The Public Health etc. (Scotland) Act 2008 is modified as follows.

(2) In section 94 (international travel)—

(a) in subsection (1)(a)(ii)—

(i) after “agreements” insert “or arrangements”,

(ii) after “contamination” insert “(including any recommendations issued under such agreements or arrangements)”,

(b) in subsection (2)—

(i) in paragraph (e), after sub-paragraph (iii) insert—

“(iv) kept in quarantine,”,

(ii) after paragraph (i) insert—

“(ia) enabling a court to order a person convicted of any offence under the regulations to take or pay for remedial action in appropriate circumstances,

(ib) providing for the carrying out and enforcement of restrictions and requirements imposed by virtue of the regulations,

(ic) providing for appeals from and reviews of restrictions and requirements imposed by virtue of the regulations,

(id) permitting or requiring the payment of incentive payments or expenses,

(ie) permitting the payment of compensation,

(if) providing for the resolution of disputes,”,

(iii) in paragraph (j), after “permitting” insert “or prohibiting”,

(c) after subsection (2) insert—

“(2A) Regulations under subsection (1) may not include provision requiring persons to undergo medical treatment.

(2B) In subsection (2A), “medical treatment” includes vaccination and other prophylactic treatment.”.

## 3 Meaning of “premises”

(1) The Public Health etc. (Scotland) Act 2008 is modified as follows.

(2) In section 123 (meaning of “premises”)—

(a) in the definition of “premises”, in paragraph (b)—

(i) before sub-paragraph (i) insert—

“(zi) a tent or other moveable structure,”,

(ii) after sub-paragraph (i), the word “and” is repealed,

(iii) after sub-paragraph (ii) insert “, and

(iii) an offshore installation (within the meaning given by regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738)).”,

(b) in the definition of “mobile home”—

(i) for “means” substitute “includes”,

(ii) for “, houseboat or other moveable structure” substitute “or houseboat”.

## CHAPTER 2

### ARRANGEMENTS FOR VACCINATION AND IMMUNISATION

#### 4 Arrangements for vaccination and immunisation

(1) The National Health Service (Scotland) Act 1978 is modified by subsection (2).

(2) In section 40 (vaccination and immunisation)—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers may make arrangements for the vaccination or immunisation of persons against any disease.”,

(b) in subsection (3)—

(i) for “Secretary of State” substitute “Scottish Ministers”,

(ii) for “medical practitioners” substitute “persons”.

(3) The Functions of Health Boards (Scotland) Order 1991 (S.I. 1991/570) is modified by subsection (4).

(4) In article 4 (functions to be exercised by Health Boards), for paragraph (g) substitute—

“(g) the power of the Scottish Ministers under section 40 to make arrangements for the vaccination or immunisation of persons against any disease and to supply vaccines, sera or other preparations for such vaccination or immunisation;”.

## PART 2

### EDUCATION

#### CHAPTER 1

##### EDUCATIONAL ESTABLISHMENTS ETC.

#### 5 Interpretation of Chapter

(1) In this Chapter—

“the 1980 Act” means the Education (Scotland) Act 1980,

“the 2005 Act” means the Further and Higher Education (Scotland) Act 2005,

“child minder” has the meaning given by paragraph 12 of schedule 12 of the Public Services Reform (Scotland) Act 2010),

“early learning and childcare” has the meaning given by section 46 of the Children and Young People (Scotland) Act 2014,

“education” includes early learning and childcare, school education, further education and higher education,

5 “education authority,” “grant-aided school”, “independent school”, “public school”, “school” and “school education” have the meanings given by section 135(1) of the 1980 Act,

“educational establishment”—

(a) means—

10 (i) a school,

(ii) an education and training establishment approved by the Scottish Qualifications Authority under section 2 of the Education (Scotland) Act 1996 as suitable for presenting persons for SQA qualifications,

(iii) a further education institution,

15 (iv) a higher education institution, and

(b) is also to be construed in accordance with subsections (3) and (4) of this section,

“further education” has the meaning given by section 6 of the Further and Higher Education (Scotland) Act 1992,

20 “further education institution” means—

(a) a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” or under the heading “Other institutions” in schedule 2 of the 2005 Act,

25 (b) a college of further education which is assigned to a regional strategic body by an order made under section 7C(1) of the 2005 Act,

“governing body” has the meaning given by section 35(2) of the 2005 Act,

“higher education” has the meaning given by section 38 of the Further and Higher Education (Scotland) Act 1992,

“higher education institution” means—

30 (a) a body listed under the heading “Institutions formerly eligible for funding by the Scottish Higher Education Funding Council” or under the heading “Other institutions” in schedule 2 of the 2005 Act,

35 (b) a person who provides a course of higher education designated by the Scottish Ministers under regulation 4(9) of the Education (Student Loans) (Scotland) Regulations 2007 (S.S.I. 2007/154) for the purposes of regulation 3(2) of those Regulations,

“managers”, in relation to a grant-aided school, has the meaning given by section 135(1) of the 1980 Act,

“out of school care” means care which is provided—

40 (a) to children who are in attendance at a school,

(b) outside school hours or during school holidays, and

(c) by a child minder or a service for the day care of children within the meaning given by paragraph 13 of schedule 12 of the Public Services Reform (Scotland) Act 2010,

“proprietor”, in relation to an independent school, has the meaning given by section 135(1) of the 1980 Act,

“protecting public health” has the meaning given by section 1(5) of the Public Health etc. Scotland Act 2008.

(2) In this Chapter, “relevant operator”—

(a) in relation to a school, means—

(i) where the school is a public school, the education authority by which it is managed,

(ii) where the school is an independent school, the proprietor,

(iii) where the school is a grant-aided school, the managers,

(b) in relation to an education and training establishment approved by the Scottish Qualifications Authority under section 2 of the Education (Scotland) Act 1996 as suitable for presenting persons for SQA qualifications, means the person who has responsibility for the management of the establishment,

(c) in relation to a further education institution or a higher education institution, means the governing body of the institution.

(3) Where out of school care is provided by a person in a school, “relevant operator” also includes such a person.

(4) Where school education, early learning and childcare or out of school care is provided by a person in premises other than a school—

(a) “relevant operator” also includes such a person, and

(b) references to “educational establishment” in this Chapter are to be read as if they were references to such premises.

## 6 Duty to have regard to public health advice

(1) A relevant authority must have regard to any advice from the Chief Medical Officer of the Scottish Administration, or from another person designated for the purposes of this section by the Scottish Ministers, about protecting public health.

(2) In subsection (1), “relevant authority” means—

(a) a relevant operator of an educational establishment,

(b) a relevant manager of a school boarding establishment (within the meaning given by section 9(6)),

(c) a relevant manager of student accommodation premises (within the meaning given by section 10(6)).

## 7 Guidance on public health measures

(1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about protecting public health and ensuring the continuity of education.

- (2) The Scottish Ministers must publish any guidance issued under subsection (1).
- (3) In subsection (1), “relevant authority” has the meaning given by section 6(2).

## **8 Regulations on continuing operation of educational establishments**

- (1) The Scottish Ministers may by regulations make provision relating to the continuing operation of an educational establishment for a specified period.
- (2) Regulations under subsection (1) may make provision applying to—
  - (a) the relevant operator of one or more named educational establishments,
  - (b) the relevant operators of all educational establishments,
  - (c) the relevant operators of a particular description of educational establishment.
- (3) Before making regulations under subsection (1), the Scottish Ministers—
  - (a) must have regard to any advice from the Chief Medical Officer of the Scottish Administration under section 6 (or, as the case may be, from another person designated for the purposes of that section by the Scottish Ministers), and
  - (b) must be satisfied, in view of that advice, that making the regulations is a necessary and proportionate action for or in connection with the continued provision of education.
- (4) Regulations under subsection (1) may provide that any failure to comply with a duty or time limit imposed under any enactment or rule of law relating to education is to be disregarded to the extent that the failure would be attributable to the regulations.
- (5) Regulations under subsection (1) may—
  - (a) confer additional functions on a relevant operator relating to—
    - (i) the provision of early learning and childcare, school education, further education or higher education,
    - (ii) the provision of related services,
    - (iii) where the relevant operator is an education authority or a further education institution or higher education institution, the use of the operator’s premises for the purpose of protecting public health,
  - (b) require an educational establishment to open, to stay open, to re-open, or to open at times when it would not usually be open,
  - (c) require a relevant operator to allow specified people or people of a specified description to attend an educational establishment or relevant premises for which the operator is responsible,
  - (d) provide for or require specified people or people of a specified description to attend a specified educational establishment or specified premises for the purposes of receiving early learning and childcare, school education, further education or higher education there,
  - (e) restrict or prohibit access in respect of the whole or a specified part of an educational establishment or of relevant premises,
  - (f) restrict or prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities,

- (g) require measures to ensure safe standards of hygiene, and other measures to protect public health, to be put in place,
- (h) require the alteration of term dates, holiday dates or examination dates,
- (i) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider appropriate,
- (j) make different provision for different purposes (for example, for different descriptions of people attending an educational establishment),
- (k) make transitional, transitory or saving provision.

(6) Where early learning and childcare or out of school care is provided by a person acting as a child minder in premises used mainly as a private dwelling, regulations under subsection (1) may only make provision applying to the part of the premises in which such care is provided.

(7) In this section—

“relevant premises” means any premises (other than residential accommodation) which people attend in order to receive services provided by or on behalf of the relevant operator of an educational establishment there,

“specified” means specified, or falling within a description specified, in regulations under subsection (1).

## 9 Regulations on school boarding accommodation

(1) The Scottish Ministers may by regulations—

- (a) require a relevant manager of a school boarding establishment to take reasonable steps to restrict or prohibit access to the establishment for a specified period,
- (b) require a relevant manager of a school boarding establishment to provide support for pupils in order to assist—
  - (i) their compliance with any restriction or requirement relating to the protection of public health imposed by virtue of an enactment or rule of law,
  - (ii) their following of any guidance or advice from a public authority relating to the protection of public health,
  - (iii) their response to a particular request or recommendation from a public authority relating to the protection of public health (for example, a recommendation for a pupil or group of pupils to self-isolate).

(2) Regulations under subsection (1) may make provision applying to—

- (a) the relevant manager of one or more named school boarding establishments,
- (b) the relevant manager of all school boarding establishments,
- (c) the relevant managers of a particular description of school boarding establishment.

(3) Before making regulations under subsection (1), the Scottish Ministers—

- (a) must have regard to any advice from the Chief Medical Officer of the Scottish Administration under section 6 (or, as the case may be, from another person designated for the purposes of that section by the Scottish Ministers), and

(b) must be satisfied, in view of that advice, that making the regulations is a necessary and proportionate action for or in connection with protecting public health.

(4) Regulations under subsection (1) may provide that any failure to comply with a duty or time limit imposed under any enactment or rule of law relating to education is to be disregarded to the extent that the failure would be attributable to the regulations.

(5) Regulations under subsection (1) may—

(a) restrict or prohibit access in respect of the whole or a specified part of premises in which school boarding accommodation is provided,

(b) restrict or prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities,

(c) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider appropriate,

(d) make different provision for different purposes (for example, for different descriptions of people for whom school boarding accommodation is provided),

(e) make transitional, transitory or saving provision.

(6) In this section—

“pupil” has the meaning given by section 135(1) of the 1980 Act,

“relevant manager”, in relation to school boarding accommodation, means a person having responsibility for the management of the accommodation,

“school boarding accommodation”, in relation to a pupil, means residential accommodation provided to the pupil by a school care accommodation service (within the meaning of paragraph 3 of schedule 12 of the Public Services Reform (Scotland) Act 2010)),

“school boarding establishment” means a place where school boarding accommodation is provided,

“specified” means specified, or falling within a description specified, in regulations under subsection (1).

## 10 Regulations on student accommodation

(1) The Scottish Ministers may by regulations—

(a) require a relevant manager of student accommodation premises to take reasonable steps to restrict or prohibit access to the premises for a specified period,

(b) require a relevant manager of student accommodation premises to provide support for students in order to assist—

(i) their compliance with any restriction or requirement relating to the protection of public health imposed by virtue of an enactment or rule of law,

(ii) their following of any guidance or advice from a public authority relating to the protection of public health,

(iii) their response to a particular request or recommendation from a public authority relating to the protection of public health (for example, a recommendation for a student or group of students to self-isolate).



- 5 (2) Regulations under subsection (1) may make provision applying to—
- (a) the relevant manager of one or more named student accommodation premises,
  - (b) the relevant managers of all student accommodation premises,
  - (c) the relevant managers of a particular description of student accommodation premises.
- 10 (3) Before making regulations under subsection (1), the Scottish Ministers—
- (a) must have regard to any advice from the Chief Medical Officer of the Scottish Administration under section 6 (or, as the case may be, from another person designated for the purposes of that section by the Scottish Ministers), and
  - (b) must be satisfied, in view of that advice, that making the regulations is a necessary and proportionate action for or in connection with protecting public health.
- (4) Regulations under subsection (1) may provide that any failure to comply with a duty or time limit imposed under any enactment or rule of law relating to education is to be disregarded to the extent that the failure would be attributable to the regulations.
- 15 (5) Regulations under subsection (1) may—
- (a) restrict or prohibit access in respect of the whole or a specified part of student accommodation premises,
  - (b) restrict or prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities,
  - 20 (c) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider appropriate,
  - (d) make different provision for different purposes (for example, for different descriptions of people for whom student accommodation is provided),
  - (e) make transitional, transitory or saving provision.
- 25 (6) In this section—
- “relevant manager”, in relation to student accommodation, means a person having responsibility for the management of the accommodation,
  - “specified” means specified, or falling within a description specified, in regulations under subsection (1),
  - 30 “student” means a person who is or is about to be matriculated at a further education institution or a higher education institution,
  - “student accommodation” means residential accommodation which has been built or converted for the purpose of being provided to students,
  - “student accommodation premises” means a place where student accommodation is provided.
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## 11 Compliance and enforcement

- (1) Regulations under this Chapter may provide for the carrying out and enforcement of restrictions and requirements imposed by virtue of the regulations.
- 40 (2) A relevant authority must have regard to any guidance issued by the Scottish Ministers about how to comply with regulations under this Chapter.

- (3) The Scottish Ministers must publish any guidance issued under subsection (2).
- (4) In subsection (2), “relevant authority” has the meaning given by section 6(2).

## **12 Procedure for regulations**

- 5 (1) Regulations made by the Scottish Ministers under this Chapter are subject to the affirmative procedure, unless subsection (2) applies to them.
- (2) This subsection applies to regulations if the Scottish statutory instrument containing the regulations includes a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure.
- 10 (3) Where subsection (2) applies—
  - (a) section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply to the regulations,
  - (b) the Scottish statutory instrument containing the regulations must be laid before the Scottish Parliament as soon as practicable after they are made, and
  - 15 (c) the regulations cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the Scottish statutory instrument containing them is approved by a resolution of the Parliament.
- (4) In calculating the period of 28 days mentioned in subsection (3)(c), no account is to be taken of any time during which the Scottish Parliament is—
  - 20 (a) in recess for more than 4 days, or
  - (b) dissolved.
- (5) Regulations ceasing to have effect by virtue of subsection (3)(c) neither—
  - (a) affects anything previously done under the regulations before they ceased to have effect, nor
  - 25 (b) prevents new regulations being made.

## **13 Review of regulations**

So long as regulations under this Chapter remain in effect, the Scottish Ministers must review the regulations—

- 30 (a) before the end of the period of 21 days beginning with the day on which the regulations came into force, and
- (b) before the end of each subsequent period of 21 days.

## **CHAPTER 2**

### **SCHOOL CONSULTATIONS**

## **14 School consultations: meetings and documents**

- 35 (1) The Schools (Consultation) (Scotland) Act 2010 is modified as follows.
- (2) After section 11 insert—

**“11ZA Directions relating to making documents available and holding public meetings**

- 5 (1) The Scottish Ministers may, on the application of an education authority, give a direction that the education authority is to take one or more of the actions mentioned in subsection (2).
- (2) Those actions are—
- 10 (a) to disregard the duty under section 4(4)(a) and 9(3)(a) to publish things in printed form,
- (b) to treat the duty under sections 4(4)(b) and 9(3)(b) to make things available for inspection in a place as a duty to make things available in such manner as the education authority considers appropriate instead,
- 15 (c) to meet the duty under section 7(1) to hold a public meeting in a place by holding a meeting using remote facilities instead.
- (3) A direction may be given under this section only if the Scottish Ministers are satisfied that giving the direction is a necessary and proportionate action for or in connection with the protection of public health.
- (4) A direction given under this section may vary or revoke an earlier direction.
- (5) A direction under this section—
- 20 (a) may be varied or revoked,
- (b) may relate to one or more relevant proposals,
- (c) may be given subject to such conditions as may be specified in the direction.
- (6) A direction given under this section must be published in such manner as the Scottish Ministers consider appropriate.
- 25 (7) In this section—
- “protection of public health” is to be construed in accordance with section 1(5) of the Public Health etc. (Scotland) Act 2008,
- “remote facilities” means any equipment or facility which—
- 30 (a) enables persons who are not in the same place to participate in the meeting, and
- (b) enables those persons to speak to and be heard by each other (whether or not it enables those persons to see and be seen by each other).”.

**PART 3**

PUBLIC SERVICE REFORM

*Bankruptcy*

**15 Bankruptcy: service of documents**

- (1) The Bankruptcy (Scotland) Act 2016 is modified as follows.

(2) After section 224 insert—

**“224A Service of documents**

(1) Where a provision of this Act or of any regulations made under it authorises or requires a document to be served on a person (whether the expression “serve”, “give”, “send” or any other expression is used), the document may be served on the person—

- (a) by being delivered personally to the person,
- (b) by being sent to the proper address of the person—
  - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or
  - (ii) by a postal service which provides for the delivery of the document to be recorded, or
- (c) by being transmitted to the person electronically.

(2) For the purpose of subsection (1)(b), the proper address of a person is—

- (a) in the case of a body corporate, the address of the registered or principal office of the body,
- (b) in the case of a partnership, the address of the principal office of the partnership,
- (c) in any other case, the last known address of the person.

(3) Where a document is served as mentioned in subsection (1)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(4) For the purpose of subsection (1)(c)—

- (a) electronic transmission of a document must be effected in a way that the recipient has indicated to the sender that the recipient is willing to receive the document,
- (b) the recipient’s indication of willingness to receive a document in a particular way may be—
  - (i) specific to the document in question or generally applicable to documents of that kind,
  - (ii) expressed specifically to the sender or generally (for example on a website),
  - (iii) 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,
- (c) the sender’s uploading of a document to an electronic storage system from which the recipient is able to download the document may constitute electronic transmission of the document, where the recipient is sent a notification that the document has been uploaded in that way,
- (d) a notice transmitted electronically is taken to have been received on the day of transmission unless the contrary is shown.

(5) This section does not apply where some other form of delivery is required by rules of court or by order of the court.”.

(3) Section 187 is repealed.

## 16 Bankruptcy: meaning of “qualified creditor” and “qualified creditors”

(1) The Bankruptcy (Scotland) Act 2016 is modified as follows.

(2) In section 7(1) (qualified creditor and qualified creditors)—

(a) in the definition of “qualified creditor”, for “£3,000” substitute “£5,000”,

(b) in the definition of “qualified creditors”, for “£3,000” substitute “£5,000”.

## 17 Bankruptcy: remote meetings of creditors

(1) The Bankruptcy (Scotland) Act 2016 is modified as follows.

(2) In schedule 6 (meetings of creditors and commissioners)—

(a) for paragraph 13 and the italic heading immediately preceding it substitute—

*“Holding of meeting*

13 Every meeting must be held either—

(a) in such place (whether or not in the sheriffdom) as is, in the opinion of the person calling the meeting, the most convenient for the majority of the creditors, or

(b) by such electronic means as would, in the opinion of the person calling the meeting, be most convenient to allow the majority of the creditors to participate in the meeting without being together in the same place.

14 Where a meeting is to be held in pursuance of paragraph 13(b), the references in paragraphs 4 and 6 to the place fixed for the holding of the meeting are to be read as references to the electronic means by which attendees are to be able to attend the meeting without being together in the same place.”.

(b) in paragraph 24—

(i) for “and place” substitute “, and at the same place or by the same electronic means,”,

(ii) for “in” to “specified” substitute “the resolution specifies otherwise”.

## *Registration of births*

## 18 Giving information of particulars of birth remotely

(1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is modified as follows.

(2) In section 14 (duty to give information of particulars of birth)—

(a) in subsection (1)(b), for “the next following subsection” substitute “subsection (2)”.

(b) in subsection (1A)—

- (i) in the opening words, the word “by” is repealed,
- (ii) in paragraph (a), before “attending” insert “by”,
- (iii) after paragraph (a), the word “or” is repealed,
- (iv) for paragraph (b) substitute—

- “(b) in a manner permitted in the circumstances (or any circumstances) by a direction issued by the registrar, or
- (c) in a manner permitted in the circumstances (or any circumstances) by a direction issued by the Registrar General.”,

(c) after subsection (1A) insert—

“(1B) Where information is given by virtue of paragraph (b) or (c) of subsection (1A)—

- (a) if the information is not given by way of submitting a completed birth registration form, the district registrar must use the information to complete a birth registration form,
- (b) the person giving the information must—
  - (i) attest the birth registration form in a manner approved by the Registrar General, or
  - (ii) provide the district registrar with any details about the person’s usual signature that the district registrar requests,
- (c) the duty under subsection (1) is not discharged until the person giving the information has complied with paragraph (b),
- (d) if the person giving the information does not attest the birth registration form, the district registrar is to attest it on the person’s behalf in a manner approved by the Registrar General (once the person has complied with any request under paragraph (b)(ii)).”.

(3) After section 14 insert—

**“14A Directions about giving information of particulars of birth**

- (1) A direction under section 14(1A)(b) may only permit information to be given in a manner approved by the Registrar General.
- (2) A direction under section 14(1A)(c) may not make different provision for different areas.
- (3) A power to issue a direction under section 14(1A) includes the power to revise or revoke an earlier direction issued under the power.
- (4) Directions under section 14(1A) must be made publicly available.
- (5) There is no duty to issue any direction under section 14(1A)(b) or (c).”.

(4) In section 16B(2) (registration of births)—

- (a) for “he obtained the attested birth registration” substitute “information was given”,
- (b) after “14(1A)(b)” insert “or (c)”.

- (5) In section 18 (which makes provision about registration by a father not married to, or in a civil partnership with, the child’s mother)—
- (a) in subsection (1)(a), for “that person” to “together with” substitute “the birth registration form is to be attested by, or on behalf of, both that person and”,
  - 5 (b) in subsection (1A), for “by him” to “the registrar” substitute “by, or on behalf of, that person”,
  - (c) after subsection (3) insert—
- “(4) References in this section to a birth registration form being attested—
- 10 (a) by a person are to the person attesting the form—
    - (i) in the prescribed manner in the presence of the district registrar, or
    - (ii) in a manner approved by the Registrar General,
  - 15 (b) on behalf of a person are to the form being attested by the district registrar in a manner approved by the Registrar General (once the person has provided the registrar with any details about the person’s usual signature requested by the registrar).”.
- (6) In section 18B (births of children where second female parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008)—
- 20 (a) in subsection (1)(a), for “woman concerned shall” to “together with” substitute “birth registration form is to be attested by, or on behalf of, both the woman concerned and”,
  - (b) in subsection (2), for “in the presence of the registrar” substitute “, or on her behalf”,
  - (c) after subsection (3) insert—
- 25 “(4) References in this section to a birth registration form being attested—
- (a) by a person are to the person attesting the form—
    - (i) in the prescribed manner in the presence of the district registrar, or
    - (ii) in a manner approved by the Registrar General,
  - 30 (b) on behalf of a person are to the form being attested by the district registrar in a manner approved by the Registrar General (once the person has provided the registrar with any details about the person’s usual signature requested by the registrar).”.

*Registration of deaths*

35 **19 Funeral director giving information of particulars of death**

- (1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is modified as follows.
  - (2) In section 23 (duty to give information of particulars of death)—
    - (a) after subsection (1) insert—
- 40 “(1ZA) The duty to give information concerning a death imposed by subsection (1) is discharged in relation to every person upon whom the duty is imposed if the

funeral director responsible for arranging the deceased’s funeral gives the information to the district registrar for a registration district on behalf of any of those persons.

(1ZB) In subsection (1ZA), “funeral director” has the meaning given by section 31(1) of the Certification of Death (Scotland) Act 2011.”,

(b) in subsection (1A), after “subsection (1)” insert “or (1ZA)”.

## 20 Giving information of particulars of death remotely

(1) The Registration of Births, Deaths and Marriages (Scotland) Act 1965 is modified as follows.

(2) In section 23 (duty to give information of particulars of death)—

(a) in subsection (1A)—

(i) in the opening words, the word “by” is repealed,

(ii) in paragraph (a), before “attending” insert “by”,

(iii) after paragraph (a), the word “or” is repealed,

(iv) for paragraph (b) substitute—

“(b) in a manner permitted in the circumstances (or any circumstances) by a direction issued by the registrar, or

(c) in a manner permitted in the circumstances (or any circumstances) by a direction issued by the Registrar General.”,

(b) after subsection (1A) insert—

“(1B) Where information is given by virtue of paragraph (b) or (c) of subsection (1A)—

(a) if the information is not given by way of submitting a completed death registration form, the district registrar must use the information to complete a death registration form,

(b) the person giving the information must—

(i) attest the death registration form in a manner approved by the Registrar General, or

(ii) provide the district registrar with any details about the person’s usual signature that the district registrar requests,

(c) the duty under subsection (1) is not discharged until the person giving the information has complied with paragraph (b),

(d) if the person giving the information does not attest the death registration form, the district registrar is to attest it on the person’s behalf in a manner approved by the Registrar General (once the person has complied with any request under paragraph (b)(ii)).”.

(3) After section 23 insert—

### “23A Directions about giving information of particulars of death

(1) A direction under section 23(1A)(b) may only permit information to be given in a manner approved by the Registrar General.



(2) A direction under section 23(1A)(c) may not make different provision for different areas.

(3) A power to issue a direction under section 23(1A) includes the power to revise or revoke an earlier direction issued under the power.

5 (4) Directions under section 23(1A) must be made publicly available.

(5) There is no duty to issue any direction under section 23(1A)(b) or (c).”.

(4) In section 25B(2) (registration of deaths)—

(a) for “he obtained the attested death registration form” substitute “information was given”,

10 (b) after “23(1A)(b)” insert “or (c)”.

### *Civic licensing*

## **21 Civic licensing: how hearings may be held**

(1) The Civic Government (Scotland) Act 1982 is modified as follows.

15 (2) In schedule 1 (licensing: further provisions as to the general system), after paragraph 18A insert—

### *“How hearings may be held*

18B(1) A licensing authority may determine that a hearing is to be held—

(a) in person,

(b) wholly through the use of remote facilities, or

20 (c) partly in person and partly through the use of remote facilities.

(2) In sub-paragraph (1), “remote facilities” means any equipment or facility which—

(a) enables persons who are not in the same place to participate in the hearing, and

25 (b) enables those persons to speak to and be heard by each other (whether or not it enables those persons to see and be seen by each other).”.

(3) In schedule 2 (control of sex shops and sexual entertainment venues), after paragraph 24A insert—

### *“How hearings may be held*

30 24B(1) A local authority may determine that a hearing is to be held—

(a) in person,

(b) wholly through the use of remote facilities, or

(c) partly in person and partly through the use of remote facilities.

(2) In sub-paragraph (1), “remote facilities” means any equipment or facility which—

35 (a) enables persons who are not in the same place to participate in the hearing, and

- (b) enables those persons to speak to and be heard by each other (whether or not it enables those persons to see and be seen by each other).”.

## 22 Civic licensing: how notices may be published

- (1) The Civic Government (Scotland) Act 1982 is modified as follows.
- 5 (2) In paragraph 2(8) of schedule 1 (licensing: further provisions as to the general system), after “the authority” insert “, or by publication of a notice on the licensing authority’s website.”.
- (3) In paragraph 7(2) of schedule 2 (control of sex shops and sexual entertainment venues), after “area” insert “, or by publishing an advertisement on the local authority’s website.”.
- 10 (4) In section 45B(6)(d) (licensing of sexual entertainment venues)—
- (a) sub-paragraph (i) is repealed,
- (b) in sub-paragraph (ii), sub-paragraphs (3A) and (3B) of the inserted text are repealed.

### *Alcohol licensing*

## 23 Alcohol licensing: how hearings may be held

- 15 (1) The Licensing (Scotland) Act 2005 is modified as follows.
- (2) After section 133 insert—

### “133A How hearings may be held

- (1) A Licensing Board may determine that a hearing is to be held—
- 20 (a) in person,
- (b) wholly through the use of remote facilities, or
- (c) partly in person and partly through the use of remote facilities.
- (2) In subsection (1), “remote facilities” means any equipment or facility which—
- 25 (a) enables persons who are not in the same place to participate in the hearing, and
- (b) enables those persons to speak to and be heard by each other (whether or not it enables those persons to see and be seen by each other).”.
- (3) In paragraph 12 of schedule 1 (proceedings)—
- (a) before sub-paragraph (1) insert—
- 30 “(A1) A Licensing Board may determine that a meeting is to be held—
- (a) in person,
- (b) wholly through the use of remote facilities, or
- (c) partly in person and partly through the use of remote facilities.”,
- (b) after sub-paragraph (2) insert—
- 35 “(2A) Where a meeting is held wholly or partly through the use of remote facilities, a Licensing Board complies with the requirement mentioned in sub-paragraph

(2) by enabling the public to observe the meeting through the use of remote facilities (for example, by making a web link to the meeting publicly available).”

(c) after sub-paragraph (6) insert—

5 “(7) In this paragraph, “remote facilities” means any equipment or facility which—

(a) enables persons who are not in the same place to participate in the meeting, and

(b) enables those persons to speak to and be heard by each other (whether or not it enables those person to see and be seen by each other).”

10

### *Land registration*

## **24 Electronic submission of copies of deeds and writs to Registers of Scotland**

(1) The Land Registration etc. (Scotland) Act 2012 is modified by subsection (2).

(2) In section 21 (application for registration of deed), after subsection (4) insert—

15 “(5) For the purposes of this section, submission by electronic means of a copy of the deed is sufficient evidence of the original for the purposes of accepting an application for registration.

(6) But subsection (5) applies only where submission of the copy is by a means (and in a form) which is specified on the Keeper’s website as being acceptable.

20 (7) In subsection (5), the reference to submission by electronic means is to submission—

(a) by means of an electronic communications network (for example as an attachment to an email), or

(b) by other means but in a form which requires the use of electronic apparatus by the recipient to render the thing delivered intelligible.

25

(8) In this section—

“electronic communications network” has the meaning given by section 32 of the Communications Act 2003,

“the Keeper’s website” means the website maintained by, or on behalf of, the Keeper of the Registers of Scotland.”

30

(3) The Land Registers (Scotland) Act 1868 is modified by subsection (4).

(4) In section 6A (provision for writs transmitted electronically to general register of sasines)—

(a) in subsection (1), the words “which is an electronic document” are repealed,

(b) after subsection (5) insert—

35

“(6) For the purposes of this section, submission by electronic means of a copy of the writ is sufficient evidence of the original for the purposes of accepting an application.

(7) But subsection (6) applies only where submission of the copy is by a means (and in a form) which is specified on the Keeper’s website as being acceptable.

(8) In subsection (6), the reference to submission by electronic means is to submission—

(a) by means of an electronic communications network (for example as an attachment to an email), or

(b) by other means but in a form which requires the use of electronic apparatus by the recipient to render the thing delivered intelligible.

(9) In this section—

“electronic communications network” has the meaning given by section 32 of the Communications Act 2003,

“the Keeper’s website” means the website maintained by, or on behalf of, the Keeper of the Registers of Scotland.”.

## **25 Register of Inhibitions: electronic signature of documents**

(1) The Bankruptcy and Diligence etc. (Scotland) Act 2007 is modified as follows.

(2) After section 148 insert—

### **“148A Register of Inhibitions: electronic signature of documents**

(1) This section applies in relation to a document which is required or permitted to be registered or recorded in the Register of Inhibitions.

(2) An electronic signature fulfils any requirement (however expressed) that the document be signed in order to be registered or recorded in the Register.

(3) Any requirement (however expressed) that the document be given to the Keeper in order to be registered or recorded in the Register may be fulfilled by transmitting it to the Keeper electronically.

(4) For the purposes of subsection (3), the document must be transmitted by a means (and in a form) which is specified on the Keeper’s website as being acceptable for those purposes.

(5) In this section—

“document” includes a copy of a document,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document,

“the Keeper” means the Keeper of the Registers of Scotland,

“the Keeper’s website” means the website maintained by, or on behalf of, the Keeper of the Registers of Scotland.”.

### *Legal aid and advice*

## **26 Claim for interim payment of fees and outlays**

(1) The Legal Aid (Scotland) Act 1986 is modified by subsections (2) to (4).

(2) In section 4 (Scottish Legal Aid Fund)—

(a) in subsection (2)—

(i) in paragraph (a), for “section 4A(13)” substitute “sections 4A(13) and 33(6)”,

(ii) after paragraph (ac) insert—

5 “(ad) such sums as are, by virtue of section 33ZB of this Act, due out of the Fund to a solicitor or counsel in connection with the provision of legal aid or advice and assistance;”,

(b) in subsection (3), after paragraph (ad) insert—

10 “(ae) any sums payable to the Board by a solicitor or counsel by virtue of section 33ZC of this Act;”.

(3) In section 33 (fees and outlays of solicitors and counsel)—

(a) after subsection (3B) insert—

15 “(3BA) But subsection (3B) does not preclude a solicitor from being paid out of the Fund under section 4(2)(ad) following a claim for interim payment made under section 33ZB in respect of the professional services and outlays mentioned in subsection (3A).”.

(b) in subsection (3C), the word “however,” is repealed,

(c) after subsection (5) insert—

20 “(6) Where a sum is paid out of the Fund under section 4(2)(ad) in connection with the provision of legal aid or advice and assistance, that sum must be deducted from the sum payable to the solicitor or counsel under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.”.

(4) After section 33ZA insert—

*“Interim payments to solicitors and counsel*

**33ZB Claim for interim payment**

(1) A claim for interim payment may be submitted to the Board by—

(a) a solicitor who is acting for a person by providing legal aid or advice and assistance under this Act,

30 (b) counsel who is acting for a person by providing legal aid under this Act.

(2) A claim for interim payment must—

(a) be submitted in the manner specified by the Board,

35 (b) include a declaration from the solicitor or (as the case may be) counsel that the sum claimed does not exceed the sum that the solicitor or counsel would expect to be paid under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.

(3) If a claim for interim payment is submitted to the Board, the sum claimed must be paid out of the Fund in accordance with section 4(2)(ad) to the solicitor or counsel who submitted the claim.

(4) But the Board may reject the claim if it appears to it that the sum claimed is likely to exceed the sum it would expect to be payable to the solicitor or counsel under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.

5 (5) In forming an expectation about the sum payable under section 4(2)(a), for the purposes of subsections (2) and (4), no account is to be taken of the deduction that would be made under section 33(6) if the claim for interim payment were met.

### 33ZC Recovery where interim payment excessive

10 (1) This section applies where—  
 (a) a sum has been paid out of the Fund under section 4(2)(ad) to a solicitor or counsel while providing legal aid or advice and assistance, and  
 (b) the solicitor or counsel is no longer providing the legal aid or advice and assistance.

15 (2) Where the sum paid out of the Fund exceeds the sum that would, but for section 33(6), be payable under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance, the solicitor or (as the case may be) counsel is liable to the Board for the difference between the sums.

20 (3) A firm is jointly and severally liable for a sum owed by a solicitor to the Board by virtue of subsection (2) if the interim payment referred to in that subsection was made to the firm on the solicitor's instruction.

(4) Where—  
 (a) a firm is jointly and severally liable to the Board for a sum by virtue of subsection (3), and  
 25 (b) a separate sum is due to be paid out of the Fund to the firm, on the instruction of a solicitor,  
 the Board may deduct all or part of the sum mentioned in paragraph (a) from the sum mentioned in paragraph (b).

30 (5) This section is without prejudice to any other enactment or rule of law under which the difference between the sums mentioned in subsection (2) may be recovered.”.

(5) Regulation 11 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (S.I. 1989/1490) is revoked.

### *Freedom of information*

#### 35 27 Freedom of information: giving notice electronically

(1) The Freedom of Information (Scotland) Act 2002 is modified as follows.

(2) In section 74(1)(a) (giving of notice etc.)—

(a) after sub-paragraph (i), the word “or” is repealed,

(b) after sub-paragraph (ii) insert “, or

40 (iii) transmitted by electronic means.”.

*Mental health*

**28 Mental health: removal of need for witnessing of signature of nominated person**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is modified as follows.
- (2) In section 250(2A) (nomination of named person)—
- 5 (a) after paragraph (b), the word “and” is repealed,
- (b) paragraph (c) is repealed.

*Care services*

**29 Care services: giving of notices by SCSWIS**

- (1) The Public Services Reform (Scotland) Act 2010 is modified as follows.
- 10 (2) For section 101 (giving of notice) substitute—

**“101 Giving of notice**

- (1) In Chapters 3 and 4, any reference to a notice being given to a person providing, or seeking to provide, a care service is to be construed as a reference to its being—

15 (a) delivered, where the person is—

(i) an individual, to that individual,

(ii) a body corporate, to a director, secretary or other similar officer of that body or to a manager (or other similar officer) of the care service provided by that body,

20 (iii) a firm, to a partner of that firm,

(b) sent by post, properly addressed to the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or

25 (ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) transmitted to the person electronically.

- (2) In subsection (1)(a)(ii), “manager”, in relation to a care service provided by a body corporate, means the manager whose name is entered in the register maintained under regulation 5 of the Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 (S.S.I. 2011/28) in relation to the care service.

- (3) For the purpose of subsection (1)(b)—

(a) a letter is properly addressed to—

35 (i) a body corporate, if addressed to the body at its registered or principal office,

(ii) a firm, if addressed to the firm at its principal office,

(iii) any other person, if addressed to the person at the address last known,

- (b) a notice sent by post is to be taken to have been received on the third day after the day of posting unless the contrary is shown.
- (4) For the purpose of subsection (1)(c)—
- (a) electronic transmission of a notice must be effected in a way that the person has indicated to SCSWIS that the person is willing to receive the notice,
- (b) the person’s willingness to receive a notice in a particular way may be—
- (i) specific to the notice in question or generally applicable to notices or other documents of that kind,
- (ii) expressed specifically to SCSWIS or generally (for example on a website),
- (iii) inferred from the person having previously been willing to receive notices or other documents from SCSWIS in that way and not having indicated an unwillingness to do so again,
- (c) SCSWIS’ uploading of a notice to an electronic storage system from which the person is able to download the notice may constitute electronic transmission of the notice from SCSWIS to the person, where the person is sent a notification that the notice has been uploaded in that way,
- (d) a notice transmitted electronically is to be taken to have been received on the day of transmission unless the contrary is shown.”.

#### *Requirements of writing*

### **30 Disapplication of physical presence requirements**

- (1) The Requirements of Writing (Scotland) Act 1995 is modified as follows.
- (2) In section 9(6) (subscription on behalf of blind granter or granter unable to write), after “this Act” insert “(other than section 10A)”.
- (3) After section 10 insert—

#### **“10A Disapplication of physical presence requirements**

- (1) The following requirements (however expressed) do not apply—
- (a) a requirement for a relevant person to be physically in the same place as another person when that person—
- (i) signs or subscribes a document or an alteration of a document,
- (ii) takes an oath, or
- (iii) makes an affirmation or declaration,
- (b) a requirement for another person to be physically in the same place as a relevant person when the relevant person signs or subscribes a document or an alteration of a document.
- (2) In this section—
- “relevant person” means—
- (a) a solicitor,
- (b) an advocate,
- (c) a notary public,



“requirement” means a requirement arising from an enactment or rule of law.

(3) For the avoidance of doubt—

(a) the requirements described by subsection (1)(a) include a requirement that may be fulfilled by the physical presence of a professional of a type not mentioned in the definition of “relevant person” as well as by a professional of a type that is (for example, it includes a requirement for the physical presence of a solicitor or a registered medical practitioner), but

(b) subsection (1) only causes such a requirement not to apply in relation to a professional of a type that is mentioned in the definition of “relevant person.”.

### *Custody at police stations*

## **31 Custody officers’ functions**

(1) The Criminal Justice and Public Order Act 1994 is modified by subsection (2).

(2) In—

(a) section 102(2) (arrangements for the provision of prisoner escorts), after paragraph (b) insert—

“(ba) the custody of prisoners held in a police station and their production, by electronic means from the station, before a court;”.

(b) section 104(4) (powers and duties of prisoner custody officers performing escort functions), for “on any premises” to “he” substitute “—

(a) on any premises in which a court of summary jurisdiction is sitting; or

(b) in a police station and has the custody of a prisoner who is, from the station, before a court of summary jurisdiction by electronic means, the officer”.

(3) The Police and Fire Reform (Scotland) Act 2012 is modified by subsection (4).

(4) In schedule 2 (police custody and security officers: powers and duties), after paragraph 1(b) insert—

“(ba) to have custody of persons held in legal custody in a police station for the purpose of effecting their production, by electronic means from the station, before a court;”.

(5) The Criminal Justice (Scotland) Act 2016 is modified by subsection (6).

(6) In section 64 (meaning of police custody), after subsection (2) insert—

“(3) A person who is at a police station in the custody of a prisoner custody officer is not to be regarded as having been transferred into the custody of that officer for the purposes of subsection (2)(cb).

(4) In subsection (3), “prisoner custody officer” has the meaning given in section 114(1) of the Criminal Justice and Public Order Act 1994.”.

- (7) The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is modified by subsection (8).
- (8) In section 2(5)(b) (mandatory inquiries), after “2016” insert “, or otherwise in custody at a police station”.

5 *Parole Board for Scotland*

**32 Chairperson’s functions**

- (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 is modified as follows.
- (2) In schedule 2 (the Parole Board), after paragraph 2J insert—

*“Exercise of chairperson’s functions by other members*

- 10 2K (1) A function conferred on the chairperson of the Parole Board may be exercised by another member of the Parole Board in accordance with the scheme prepared under sub-paragraph (3).
- (2) Another member’s being authorised by the scheme to exercise one of the chairperson’s functions does not preclude the chairperson from exercising that function.
- 15 (3) The chairperson must prepare a scheme that authorises another member, or members, to exercise the functions conferred on the chairperson.
- (4) The scheme—
- 20 (a) must be framed so that a member is, or a combination of members are, authorised to discharge all of the chairperson’s functions in the following circumstances—
- (i) there is no chairperson,
- (ii) the chairperson is unable to exercise the functions for any reason (for example due to ill health), and
- 25 (b) may be framed so that, outwith those circumstances, other members are authorised to discharge any, or all, of the chairperson’s functions either at any time or in circumstances specified by the scheme.
- (5) The chairperson may modify the scheme at any time.
- (6) The Parole Board must make the scheme publicly available.
- 30 (7) Only the chairperson may prepare and modify the scheme; accordingly, the references to the chairperson’s functions elsewhere in this paragraph do not include the functions of preparing and modifying the scheme.”.

**PART 4**

TENANCIES

35 *Removal of mandatory eviction grounds*

**33 Private residential tenancies: discretionary eviction grounds**

- (1) The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.

(2) In section 51(2) (First-tier Tribunal’s power to issue an eviction order), the words “or must” are repealed.

(3) In schedule 3 (eviction grounds)—

(a) in paragraph 1(2) (landlord intends to sell)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (a), the word “and” is repealed,

(iii) after paragraph (b) insert “, and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(b) in paragraph 2(2) (property to be sold by lender)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(c) in paragraph 3(2) (landlord intends to refurbish)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

(d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,

(d) in paragraph 4(2) (landlord intends to live in property)—

(i) for “must” substitute “may”,

(ii) the words from “the landlord” to “3 months” become paragraph (a),

(iii) after paragraph (a) insert “, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(e) in paragraph 6(2) (landlord intends to use for non-residential purpose)—

(i) for “must” substitute “may”,

(ii) the words from “the landlord” to “home” become paragraph (a),

(iii) after paragraph (a) insert “, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.”,

(f) in paragraph 7(2) (property required for religious purpose)—

(i) in the opening words, for “must” substitute “may”,

(ii) after paragraph (b), the word “and” is repealed,

(iii) after paragraph (c) insert “, and

- (d) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (g) in paragraph 8 (not an employee)—
- (i) in the opening words of sub-paragraph (2), for “must” substitute “may”,
- (ii) for sub-paragraph (2)(c) substitute—
- “ (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (iii) sub-paragraph (3) is repealed,
- (iv) in sub-paragraph (4), for “sub-paragraphs (2) and (3)” substitute “sub-paragraph (2)”,
- (h) in paragraph 10(2) (not occupying let property)—
- (i) in the opening words, for “must” substitute “may”,
- (ii) after paragraph (a), the word “and” is repealed,
- (iii) after paragraph (b) insert “, and
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (i) in paragraph 12 (rent arrears), sub-paragraph (2) is repealed,
- (j) in paragraph 13(2) (criminal behaviour)—
- (i) in the opening words, for “must” substitute “may”,
- (ii) after paragraph (a), the word “and” is repealed,
- (iii) after paragraph (b) insert “, and
- (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.”,
- (k) in paragraph 14(2) (anti-social behaviour), after paragraph (b), for “and” substitute—
- “(ba) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and”.

### 34 Assured tenancies: discretionary eviction grounds

- (1) The Housing (Scotland) Act 1988 is modified as follows.
- (2) In section 18 (orders for possession)—
- (a) subsections (3) and (3A) are repealed,
- (b) in subsection (4), for “Part II” substitute “Part I or II”,
- (c) in subsection (6)(a), the words “or Ground 8” are repealed,
- (d) in subsection (8), for “subsections (3A) and (4A)” substitute “subsection (4A)”.
- (3) In section 19 (notice of proceedings for possession), subsection (5) is repealed.

- (4) In section 20 (extended discretion of First-tier Tribunal in possession claims)—  
    (a) in subsection (1), for “Subject to subsection (6) below, the” substitute “The”,  
    (b) subsection (6) is repealed.
- (5) In section 33(1) (recovery of possession on termination of a short assured tenancy)—  
5      (a) in the opening words, for “shall” substitute “may”,  
    (b) after paragraph (b), the word “and” is repealed,  
    (c) after paragraph (d) insert “, and  
        “(e) that it is reasonable to make an order for possession.”.
- (6) In schedule 5 (grounds for possession of houses let on assured tenancies)—  
10      (a) in Part I, Ground 8 is repealed,  
    (b) the heading of Part I becomes “Certain grounds on which First-tier Tribunal may  
        order possession”,  
    (c) the heading of Part II becomes “Further grounds on which First-tier Tribunal may  
        order possession”.

15   **35      Tenancies under the Rent (Scotland) Act 1984: discretionary eviction grounds**

- (1) The Rent (Scotland) Act 1984 is modified as follows.
- (2) In section 11 (grounds for possession of certain dwelling-houses)—  
    (a) in subsection (1)(b), after “Part I” insert “or II”,  
    (b) subsection (2) is repealed.
- 20   (3) In section 12 (extended discretion of Tribunal)—  
    (a) in subsection (1), the words “Subject to subsection (5) below,” are repealed,  
    (b) in subsection (2), the words “, subject to subsection (5) below,” are repealed,  
    (c) subsection (5) is repealed.
- (4) In section 14 (conditions applying to recovery of short tenancies)—  
25      (a) in subsection (1), after “Act” insert “provided the First-tier Tribunal considers it  
        reasonable to allow such recovery”,  
    (b) in subsection (3)—  
        (i) the words from “a landlord” to “above,” become paragraph (a),  
        (ii) after paragraph (a) insert “or  
30              (b) the First-tier Tribunal does not consider it reasonable to allow recovery  
                in accordance with the said Case 15,”,  
        (iii) the words from “the tenancy shall” to “this subsection.” become the closing  
            words.
- (5) In schedule 2 (grounds for possession for protected or statutory tenancies)—  
35      (a) the heading of Part I becomes “Certain cases in which First-tier Tribunal may  
        order possession”,

- (b) the heading of Part II becomes “Further cases in which First-tier Tribunal may order possession”.

*Pre-action protocol in respect of evictions relating to rent arrears*

**36 Private residential tenancies: pre-action protocol**

- (1) The Private Housing (Tenancies) (Scotland) Act 2016 is modified as follows.
- (2) In paragraph 12 of schedule 3 (rent arrears)—
- (a) in sub-paragraph (4)—
- (i) the words from “whether the” to “benefit” become paragraph (a),
- (ii) after paragraph (a) insert “, and
- (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations.”,
- (b) after sub-paragraph (5) insert—
- “(6) Regulations under sub-paragraph (4)(b) may make provision about—
- (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),
- (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
- (c) such other matters as the Scottish Ministers consider appropriate.”.
- (3) In section 77(3) (regulation-making powers), after “41” insert “and paragraph 12(4)(b) of schedule 3”.

**37 Assured tenancies: pre-action protocol**

- (1) The Housing (Scotland) Act 1988 is modified as follows.
- (2) In section 18 (orders for possession)—
- (a) in subsection (4A)—
- (i) the words from “the extent” to “universal credit” become paragraph (a),
- (ii) after paragraph (a) insert “, and
- (b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers in regulations.”,
- (b) after subsection (8) insert—
- “(9) Regulations under subsection (4A)(b) may make provision about—
- (a) information which should be provided by a landlord to a tenant (including information about the terms of the tenancy, rent arrears and any other outstanding financial obligation under the tenancy),

- (b) steps which should be taken by a landlord with a view to seeking to agree arrangements with a tenant for payment of future rent, rent arrears and any other outstanding financial obligation under the tenancy,
- (c) such other matters as the Scottish Ministers consider appropriate.

- 5 (10) Regulations under subsection (4A)(b) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).”.
- (3) In section 53(2) (orders and regulations), after “above” insert “or regulations under section 18(4A)(b)”.

10

## PART 5

### TEMPORARY JUSTICE MEASURES

#### *Temporary provisions*

#### **38 The measures**

The schedule contains temporary modifications to the law.

15

#### **39 Power to suspend and revive**

- (1) The Scottish Ministers may by regulations—
- (a) suspend the operation of any provision in the schedule,
  - (b) revive the operation of a provision so suspended.
- (2) Sections 15 to 17 of the Interpretation and Legislative Reform (Scotland) Act 2010 (effect of repeals) apply to the suspension of a provision by regulations under subsection (1)(a) as if the provision had been repealed by an Act.
- (3) The powers in subsection (1) may be exercised more than once in relation to the same provision.

20

#### **40 Expiry**

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- (1) The temporary modifications to the law in the schedule expire at the end of 30 November 2023.
- (2) Subsection (1) is subject to the power to bring expiry forward under section 41.
- (3) The Scottish Ministers—
- (a) may by regulations modify subsection (1) so that it specifies a date one year later than the date for the time being specified, but
  - (b) may not, by virtue of this subsection, modify subsection (1) so that it specifies a date later than 30 November 2025.

30

**41 Power to bring expiry forward**

The Scottish Ministers may by regulations provide that any provision in the schedule—

- (a) does not expire at the time when it would otherwise expire (whether by virtue of section 40 or previous regulations under this section), and
- (b) expires instead at such earlier time as is specified in the regulations.

**42 Regulations under this Part**

- (1) A power to make regulations conferred by this Part includes the power to make different provision for different purposes.
- (2) Regulations under sections 39 and 41 are subject to the negative procedure.
- (3) Regulations under section 40 are subject to the affirmative procedure.
- (4) At the same time as laying a draft Scottish statutory instrument containing regulations under section 40(3) before the Scottish Parliament in accordance with section 29(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (instruments subject to the affirmative procedure), the Scottish Ministers must lay before the Parliament a statement of their reasons why the regulations should be made.

*Supporting provisions***43 Criminal procedure time limits: consequential modifications**

- (1) The Criminal Procedure (Scotland) Act 1995 is modified as follows.
- (2) In section 52T(4) (prevention of delay in trials: assessment orders and treatment orders)—
  - (a) in paragraph (a), for “the total periods of 80 days, 110 days and 140 days” substitute “any period”,
  - (b) in paragraph (b), the word “total” is repealed,
  - (c) in paragraph (c)—
    - (i) for “total of 40 days” substitute “period”,
    - (ii) before “section” insert “subsection (1) of”.
- (3) In section 65 (solemn proceedings: prevention of delay in trials)—
  - (a) in subsection (3), for “either or both of the periods of 11 and 12 months”, in both places where it occurs, substitute “any period”,
  - (b) in subsection (10)—
    - (i) for “the periods of 11 and 12 months specified in subsections (1) and (3) above” substitute “any period specified in subsection (1) (including any such period as extended)”,
    - (ii) for “detained” substitute “in lawful custody”,
    - (iii) the words from “in any prison” to the end of the subsection are repealed.



- (4) In section 71B (first diet: appointment of trial date)—
- (a) in subsection (3)—
    - (i) for “12 month period”, in both places where it occurs, substitute “period specified in section 65(1)(b)”,
    - (ii) for “140 day period” substitute “period specified in section 65(4)(b)(ii)”,
  - (b) in subsection (4), for “12 month period” substitute “period specified in section 65(1)(b)”,
  - (c) in subsection (5)—
    - (i) for “140 day period” substitute “period specified in section 65(4)(b)(ii)”,
    - (ii) for “12 month period”, in both places where it occurs, substitute “period specified in section 65(1)(b)”,
  - (d) in subsection (6)—
    - (i) for “140 day period”, in both places where it occurs, substitute “period specified in section 65(4)(b)(ii)”,
    - (ii) for “12 month period” substitute “period specified in section 65(1)(b)”,
  - (e) in subsection (7)—
    - (i) for “140 day period” substitute “period specified in section 65(4)(b)(ii)”,
    - (ii) for “12 month period”, in both places where it occurs, substitute “period specified in section 65(1)(b)”,
  - (f) for subsection (10) substitute—

“(10) In this section a reference to the period specified in section 65(1)(b) or section 65(4)(b)(ii) is to be construed as including that period as extended.”.
- (5) In section 72A (preliminary hearing: appointment of trial diet)—
- (a) in subsection (3)—
    - (i) for “12 month period”, in both places where it occurs, substitute “period specified in section 65(1)(b)”,
    - (ii) for “140 day period” substitute “period specified in section 65(4)(aa)(ii)”,
  - (b) in subsection (4), for “12 month period” substitute “period specified in section 65(1)(b)”,
  - (c) in subsection (5)—
    - (i) for “140 day period” substitute “period specified in section 65(4)(aa)(ii)”,
    - (ii) for “12 month period”, in both places where it occurs, substitute “period specified in section 65(1)(b)”,
  - (d) in subsection (6)—
    - (i) for “140 day period”, in both places where it occurs, substitute “period specified in section 65(4)(aa)(ii)”,
    - (ii) for “12 month period” substitute “period specified in section 65(1)(b)”,

- (e) in subsection (7)—
- (i) for “140 day period” substitute “period specified in section 65(4)(aa)(ii)”,
  - (ii) for “12 month period”, in both places where it occurs, substitute “period specified in section 65(1)(b)”,
- 5 (f) for subsection (10) substitute—
- “(10) In this section a reference to the period specified in section 65(1)(b) or section 65(4)(aa)(ii) is to be construed as including that period as extended.”.

#### 44 Effect of early release from prison or young offenders institution by virtue of regulations

- 10 (1) A person described in the first column of the table below who is released from custody by virtue of regulations under paragraph 24 of the schedule, or paragraph 19(1) of schedule 4 of the Coronavirus (Scotland) Act 2020, is deemed to have been released by virtue of the provision of the 1993 Act mentioned in the corresponding entry in the second column.

<i>Status of person immediately before release</i>	<i>Provision of the 1993 Act by virtue of which the person is deemed to have been released</i>
A short-term prisoner	section 1(1)
A long-term prisoner	section 1(3)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) of the 1993 Act (fine defaulters and persons in contempt of court) and who is, for any purpose, to be treated as a short-term prisoner by virtue of that section	section 1(1), construed as required by section 5(2)
A person serving a term of imprisonment or detention imposed on a basis mentioned in section 5(1)(a) or (b) of the 1993 Act and who is, for any purpose, to be treated as a long-term prisoner by virtue of that section	section 1(3), construed as required by section 5(2)
A person detained—	section 7(2)
(a) under section 208 of the Criminal Procedure (Scotland) Act 1995 (detention of children convicted on indictment), or	
(b) in pursuance of an order under section 7(3) of the 1993 Act (children detained in solemn proceedings)	

- (2) In this section—
- (a) “1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - (b) “short-term prisoner” and “long-term prisoner”—
    - (i) have the meanings given in section 27(1) of the 1993 Act, and

- (ii) include a person treated, for any purpose, as a short-term prisoner or (as the case may be) a long-term prisoner by virtue of section 6(1)(a) or 16(5)(a) of the 1993 Act.

## **PART 6**

### FINAL PROVISIONS

5

#### **45 Ancillary provision**

10

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may—
  - (a) modify any enactment (including this Act),
  - (b) make different provision for different purposes.
- (3) Regulations under subsection (1)—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
  - (b) otherwise, are subject to the negative procedure.

15

#### **46 Commencement**

20

- (1) The following provisions of this Act come into force on the day after Royal Assent—
  - (a) section 45,
  - (b) this section,
  - (c) section 47.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

25

#### **47 Short title**

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The short title of this Act is the Coronavirus (Recovery and Reform) (Scotland) Act 2022.

SCHEDULE  
(introduced by section 38)

TEMPORARY JUSTICE MEASURES

**PART 1**

5            COURTS AND TRIBUNALS: CONDUCT OF BUSINESS BY ELECTRONIC MEANS ETC.

**CHAPTER 1**

DOCUMENTS

*Electronic signing*

- 10    1 (1) An electronic signature fulfils any requirement (however expressed and for whatever purpose) for the signing, intialling or signetting of—
- (a) a document of a type mentioned in paragraph 3(1), or
  - (b) a deletion or correction to such a document.
- 15    (2) In this paragraph, “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000, but includes a version of an electronic signature which is reproduced on a paper document.

*Sending electronically and to a solicitor*

- 20    2 (1) Any requirement (however expressed) that a document of a type mentioned in paragraph 3(1) be given to a person may be fulfilled by—
- (a) transmitting it to the person electronically, or
  - (b) transmitting it (electronically or otherwise) to a solicitor engaged to act on the person’s behalf in relation to the proceedings in question.
- 25    (2) For the purposes of this paragraph—
- (a) electronic transmission of a document by one person (“the sender”) to another person (“the recipient”) must be effected in a way that the recipient has indicated to the sender that the recipient is willing to receive the document,
  - (b) the recipient’s indication of willingness to receive a document in a particular way may be—
    - 30    (i) specific to the document in question or generally applicable to documents of that kind,
    - (ii) expressed specifically to the sender or generally (for example on a website),
    - (iii) 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,
  - (c) the sender’s uploading of a document to an electronic storage system from which the recipient is able to download the document may constitute electronic
- 35    transmission of the document from the sender to the recipient.

- (3) In this paragraph, references to giving a person a document include—
- (a) serving a document on a person,
  - (b) sending a document to a person, and
  - (c) lodging a document with, or otherwise apply to or petitioning, a court or tribunal.

*5 Documents to which paragraphs 1 and 2 apply*

- 3 (1) The types of document referred to in paragraphs 1 and 2 are—
- (a) an order, warrant, sentence, citation, minute or any other document produced by a court or tribunal,
  - (b) an extract of any document referred to in paragraph (a),
  - 10 (c) any document that an enactment requires be given to a person in connection with, or in order to initiate, proceedings,
  - (d) any document that an enactment requires to be signed, initialled or signetted in order that it, or any other thing, may be used in proceedings for any purpose including—
    - 15 (i) being used as evidence, or
    - (ii) being treated as sufficient evidence of a matter.
- (2) But a type of document mentioned in sub-paragraph (1) is not to be regarded as mentioned in that sub-paragraph for the purposes of paragraph 1 or 2 (or both) if—
- (a) the Lord President of the Court of Session, or
  - 20 (b) the Lord Justice General,
- directs that it is not.
- (3) A direction under sub-paragraph (2) may—
- (a) relate to some or all proceedings,
  - (b) vary or revoke an earlier direction under that sub-paragraph.

*25 Intimation etc. on Scottish Courts and Tribunals Service website*

- 4 (1) Any requirement (however expressed) that a document—
- (a) be put on the walls, doors or any other part of a court building (whether internal or external), or
  - (b) be made publicly available in any other way within a court building,
- 30 may be fulfilled instead by the document's being made publicly available through the Scottish Courts and Tribunals Service website.
- (2) But sub-paragraph (1) does not apply to a document if it is of a type that—
- (a) the Lord President of the Court of Session, or
  - (b) the Lord Justice General,
- 35 has directed that sub-paragraph (1) does not apply to.

- (3) Where a document is to be made publicly available through the Scottish Courts and Tribunals Service website by virtue of this paragraph, it is to so be made available in accordance with—
- (a) any direction issued by—
- (i) the Lord President of the Court of Session, or
- (ii) the Lord Justice General, and
- (b) (subject to any necessary modifications) any enactment about—
- (i) how a step mentioned in paragraph (a) or (b) of sub-paragraph (1) is to be taken in relation to the document, or
- (ii) the length of time for which the document is to be made publicly available in a way described by those paragraphs.
- (4) A direction under sub-paragraph (3)(a) may, in particular, provide that a document is to be made available only in a redacted form.
- (5) If an enactment provides for an alternative to taking a step mentioned in paragraph (a) or (b) of sub-paragraph (1) as a means of achieving an outcome (for example, advertising an application in a newspaper as a means of intimating it), nothing in this paragraph precludes the taking of that alternative step to achieve the outcome.
- (6) In this paragraph, “the Scottish Courts and Tribunals Service website” means the website maintained by, or on behalf of, the Service with the internet domain name *scotcourts.gov.uk*.

### *Interpretation of Chapter*

- 5 In this Chapter—
- (a) references to a court or tribunal include an office holder of a court or tribunal,
- (b) “document” includes a copy of a document.

## CHAPTER 2

### ATTENDING A COURT OR TRIBUNAL

#### *Suspension of requirement to physically attend*

- 6 (1) Any requirement (however expressed) that a person physically attend a court or tribunal does not apply, unless the court or tribunal directs the person to attend physically.
- 30 (2) But sub-paragraph (1) does not apply in relation to a hearing in which a person is to give evidence.
- (3) In the case of a hearing in which a person is to give evidence, the court may disapply any requirement (however expressed) that a person physically attend the court by directing that the person need not do so.
- 35 (4) A court or tribunal may issue a direction under sub-paragraph (1) only if it considers that allowing the person to attend by electronic means would—
- (a) prejudice the fairness of the proceedings, or

(b) otherwise be contrary to the interests of justice.

(5) A court may issue a direction under sub-paragraph (3) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 7 would not—

(a) prejudice the fairness of the proceedings, or

(b) otherwise be contrary to the interests of justice.

(6) The power to issue a direction under both sub-paragraphs (1) and (3) includes the power to revoke an earlier direction under that sub-paragraph.

(7) A court or tribunal may issue a direction under sub-paragraph (1) or (3) on the motion of a party or of its own accord.

(8) In considering whether to issue a direction under sub-paragraph (1) or (3), the court or tribunal must—

(a) give all parties an opportunity to make representations, and

(b) have regard to any guidance issued by—

(i) the Lord President of the Court of Session, or

(ii) the Lord Justice General.

(9) References in this paragraph to physically attending a court or tribunal are to—

(a) being in a particular place, or

(b) being in the same place as another person,

for the purpose of any proceedings before a court or tribunal or an office holder of a court or tribunal.

#### *Attending by electronic means*

(1) A person excused from a requirement to physically attend a court or tribunal by virtue of paragraph 6(1) or (3) must instead appear before the court, tribunal or office holder (as the case may be) by electronic means in accordance with a direction issued by the court or tribunal.

(2) A person who fails to do so is to be regarded as having failed to comply with the requirement to physically attend from which the person is excused.

(3) The power under sub-paragraph (1) to issue a direction includes the power to vary or revoke an earlier direction issued under that sub-paragraph.

(4) A direction under sub-paragraph (1)—

(a) is to set out how the person is to appear by electronic means before the court, tribunal or office holder, and

(b) may include any other provision which the court or tribunal considers appropriate.

(5) A court or tribunal may issue a direction under sub-paragraph (1) on the motion of a party or of its own accord.

(6) Before issuing a direction under sub-paragraph (1), the court or tribunal must—

(a) give all parties an opportunity to make representations, and

- (b) have regard to any guidance issued by—
  - (i) the Lord President of the Court of Session, or
  - (ii) the Lord Justice General.

(7) A direction under sub-paragraph (1) setting out—

- (a) how a party to proceedings is to attend by electronic means a hearing in which a person is to give evidence, must provide for the party to use means that enable the party to both see and hear all of the other parties, the judge and (where applicable) the jury and any witness who is giving evidence,
  - (b) how a witness who is to give evidence at a hearing is to attend by electronic means, must provide for the witness to use means that enable all of the parties, the judge and (where applicable) the jury to both see and hear the witness.
- (8) Nothing in sub-paragraph (7) is to be taken to mean that a person is to be enabled to see or hear a witness in a way that measures taken in accordance with an order of the court or tribunal would otherwise prevent.

*General directions under paragraph 7*

8 (1) A court or tribunal may—

- (a) issue a direction under paragraph 7(1) that applies for the purpose of all proceedings of a type specified in the direction, provided that the only party to the proceedings is a public official,
- (b) issue a further direction under paragraph 7(1) overriding, for the purpose of specific proceedings, a general direction issued by virtue of paragraph (a).

(2) Paragraph 7(6)(a) does not apply in relation to a general direction issued by virtue of sub-paragraph (1)(a).

(3) In this paragraph—

“public official” means—

- (a) a person who is a public authority and is acting in that capacity, or
- (b) a person who is acting on behalf of a public authority,

“public authority” is to be construed in accordance with section 6 of the Human Rights Act 1998.

### CHAPTER 3

#### FURTHER PROVISION

*Publication of directions and guidance*

9 A person who issues any of the following must make it publicly available for so long as it has effect—

- (a) a direction under paragraph 3(2),
- (b) a direction under paragraph 4(2) or (3)(a),



- (c) guidance under paragraph 6(8)(b),
- (d) guidance under paragraph 7(6)(b).

*Transitional provision for directions under earlier enactment*

5 10 (1) A direction under the provision of schedule 4 of the Coronavirus (Scotland) Act 2020 mentioned in the first column of the table below is to be treated as though it were a direction under the provision of this Part mentioned in the corresponding entry in the second column.

<i>Provision of schedule 4 of the Coronavirus (Scotland) Act 2020 under which the direction was issued</i>	<i>Provision of this Part under which the direction is to be treated as having been issued</i>
paragraph 1 (5)	paragraph 3 (2)
paragraph 1A (2)	paragraph 4 (2)
paragraph 1A (3) (a)	paragraph 4 (3) (a)
paragraph 2 (1)	paragraph 6 (1)
15 paragraph 2 (3)	paragraph 6 (3)
paragraph 3 (1)	paragraph 7 (1)

- (2) A general direction issued by virtue of paragraph 4(1)(a) of schedule 4 of the Coronavirus (Scotland) Act 2020 is to be treated as though it were issued by virtue of paragraph 8(1)(a).

*Interpretation of Part*

11 In this Part—

“court” means any of the Scottish courts as defined in section 2(6) of the Judiciary and Courts (Scotland) Act 2008,

25 “proceedings” includes any process before a court or tribunal, or any office holder of a court or tribunal (for example, a process by which a warrant may be obtained for the purpose of investigating a suspected offence),

“requirement” means a requirement arising from an enactment or rule of law,

“tribunal” means—

- (a) the First-tier Tribunal for Scotland,
- 30 (b) the Upper Tribunal for Scotland.

**PART 2**

FISCAL FINES

*Increase of maximum penalty*

- 5 12 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modification in sub-paragraph (2).
- (2) Section 302(7A) (maximum fixed penalty that may be prescribed) has effect as if for “£300” there were substituted “£500”.

*New scale*

- 10 13 (1) The Criminal Procedure (Scotland) Act 1995 Fixed Penalty Order 2008 (S.S.I. 2008/108) applies in accordance with the modification in sub-paragraph (2).
- (2) The schedule has effect as if for it there were substituted—

“SCHEDULE

Article 2

THE SCALE OF FIXED PENALTIES

<i>Level on the scale</i>	<i>Amount of fixed penalty</i>
15 1	£50
2	£75
3	£100
4	£150
5	£200
20 6	£250
7	£300
8	£400
9	£500”.

**PART 3**

25 FAILURE TO APPEAR BEFORE COURT FOLLOWING POLICE LIBERATION

*Power for court to reschedule due to coronavirus*

- 14 (1) The Criminal Justice (Scotland) Act 2016 applies in accordance with the modifications in this paragraph.
- 30 (2) Section 29 (expiry of undertaking) has effect as if in subsection (1)(a), after “court” there were inserted “(but see section 29A)”.

(3) The Act has effect as if after section 29 there were inserted—

**“29A Expiry of undertaking: coronavirus-related reason for non-appearance**

(1) A court may modify the terms of an undertaking given under section 25(2)(a) by changing the time specified as the time at which the person is to appear at the court if—

(a) the person has failed to appear as required by the terms of the undertaking,

(b) the court considers that the failure to appear is attributable to a reason relating to coronavirus, and

(c) the court does not consider it appropriate to grant a warrant for the person’s arrest on account of the failure to appear.

(2) Where a court modifies the terms of an undertaking under subsection (1), the procurator fiscal must give notice of the modification to the person who gave the undertaking as soon as reasonably practicable.

(3) Notice under subsection (2) must be effected in a manner by which citation may be effected under section 141 of the 1995 Act.

(4) The reference in subsection (1) to the terms of an undertaking are to the terms of the undertaking subject to any modification by notice under section 27(1).

(5) A reference in any enactment to the terms of an undertaking being modified by notice under section 27(1) includes their being modified under subsection (1).

(6) In subsection (1)(b), “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).”

**PART 4**

**NATIONAL JURISDICTION FOR CALLINGS FROM CUSTODY ETC.**

*Ability to take calling in any sheriff court and then maintain proceedings*

(1) A calling of criminal proceedings in the sheriff court to which sub-paragraph (2) applies may be dealt with—

(a) in any sheriff court in Scotland, and

(b) by a sheriff of any sheriffdom.

(2) This sub-paragraph applies to a calling of criminal proceedings in which the person who is the subject of the proceedings is appearing from custody—

(a) having been arrested by a constable in connection with the matter to which the proceedings relate, and

(b) without having subsequently—

(i) been released from custody, or

(ii) had a court authorise the person’s continued remand in custody.

- (3) If more than one person is the subject of the proceedings, the reference in sub-paragraph (2) to the person who is the subject of the proceedings is to be read as referring to any of them.
- (4) It is for the Lord Advocate or the procurator fiscal to determine in which sheriff court a calling to which sub-paragraph (2) applies is to be taken.
- (5) Where proceedings have come before a sheriff court by virtue of sub-paragraph (1), the proceedings may continue to be dealt with—
- (a) in the same sheriff court, and
  - (b) by a sheriff of any sheriffdom.
- (6) Proceedings may continue to be dealt with by virtue of sub-paragraph (5) until their conclusion, except that—
- (a) in the case of summary proceedings, or proceedings on petition or indictment, insofar as the proceedings relate to a charge in respect of which the accused person has tendered a plea of not guilty which has not been accepted by the prosecutor, they cannot continue to be dealt with by virtue of sub-paragraph (5) after the end of the diet at which that plea was tendered,
  - (b) in the case of proceedings on petition or indictment, they cannot continue to be dealt with by virtue of sub-paragraph (5) after committal of the accused person until liberation in due course of law.
- (7) For the purposes of sub-paragraph (5), proceedings on petition and any subsequent proceedings on indictment are to be treated as the same proceedings.

*Ability of any sheriff court to deal with proceedings following failure to appear*

- 16 (1) This paragraph applies where—
- (a) a calling of proceedings has come before a sheriff court by virtue of paragraph 15(1), and
  - (b) the proceedings are in respect of an accused person's failure to attend a diet in summary criminal proceedings or proceedings on indictment ("the principal proceedings").
- (2) If the principal proceedings are proceedings on indictment, the court may deal with them until the end of the diet in which the calling mentioned in sub-paragraph (1)(a) takes place.
- (3) If the principal proceedings are summary criminal proceedings, they may continue to be dealt with—
- (a) in the same sheriff court, and
  - (b) by a sheriff of any sheriffdom,

unless, and until the end of the diet at which, the accused person tenders a plea of not guilty or confirms that the person is adhering to a previously tendered plea of not guilty and (in either case) that plea is not accepted by the prosecutor.

*Further provision about extra-territorial jurisdiction*

17 (1) A sheriff court has jurisdiction for all cases which come before it by virtue of this Part.

(2) A procurator fiscal for a sheriff court district has—

5 (a) power to prosecute or, as the case may be, represent the interests of the prosecutor in any case that comes before the sheriff court of that district by virtue of this Part,

(b) the like powers in relation to such cases as the prosecutor has for the purposes of other cases that come before the sheriff when exercising criminal jurisdiction.

10 (3) For the purposes of this Part, a sheriff may, without the need for further commission, exercise the jurisdiction and powers that attach to the office of sheriff in relation to criminal proceedings in every sheriffdom (and the same applies accordingly to any other member of the judiciary, so far as that member has the jurisdiction and powers that attach to the office of sheriff in relation to criminal proceedings).

15 (4) This Part is without prejudice to sections 4 to 10, 34A and 137C of the Criminal Procedure (Scotland) Act 1995.

*Interpretation of Part*

18 (1) In this Part, “criminal proceedings” means any proceedings in which a court is exercising criminal jurisdiction including in particular—

(a) proceedings on indictment,

20 (b) proceedings on petition,

(c) summary proceedings,

(d) ancillary proceedings, such as proceedings in respect of—

(i) breach of bail,

(ii) non-payment of a fine or other monetary penalty,

25 (iii) breach of an order of a court, or

(iv) failure of an accused person or a witness to attend a diet.

(2) Any expression used in this Part which is also used in the Criminal Procedure (Scotland) Act 1995 has the same meaning as it does in that Act.

**PART 5**

30 CRIMINAL PROCEDURE TIME LIMITS

**CHAPTER 1**

EXTENSION OF PERIODS

*Solemn proceedings: periods within which procedural hearings and trial must commence*

35 19 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modifications in this paragraph.

- (2) Section 65(1) (solemn proceedings: prevention of delay in trials) has effect as if—
- (a) in paragraph (a), for “11 months” there were substituted “17 months”,
  - (b) in paragraph (aa), for “11 months” there were substituted “17 months”,
  - (c) in paragraph (b), for “12 months” there were substituted “18 months”.

5 *Summary proceedings: period within which prosecution for statutory offence must commence*

- 20 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modifications in this paragraph.
- (2) Section 136(1) (summary proceedings: time limits) has effect as if for “six months”, in both places where it occurs, there were substituted “12 months”.

10 *Pre-trial and pre-sentence remand period*

- 21 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modifications in this paragraph.
- (2) Section 65(4) (solemn proceedings: prevention of delay in trials) has effect as if—
- (a) in paragraph (a), for “80 days” there were substituted “260 days”,
  - 15 (b) in paragraph (aa)(i), for “110 days” there were substituted “290 days”,
  - (c) in paragraph (aa)(ii), for “140 days” there were substituted “320 days”,
  - (d) in paragraph (b)(i), for “110 days” there were substituted “290 days”,
  - (e) in paragraph (b)(ii), for “140 days” there were substituted “320 days”.
- (3) Section 147(1) (summary proceedings: prevention of delay in trials) has effect as if for  
 20 “40 days” there were substituted “130 days”.
- (4) Section 200 (remand for inquiry into physical or mental condition) has effect as if—
- (a) in subsection (2), in the closing words, the words “, no single period exceeding three weeks,” were repealed,
  - (b) in subsection (3)(a), the words “not exceeding three weeks” were repealed.

25

## CHAPTER 2

### ADJOURNMENT PERIODS

*Power of court to adjourn cases*

- 22 (1) The Criminal Procedure (Scotland) Act 1995 applies in accordance with the modifications in sub-paragraphs (2) to (5).
- 30 (2) Section 145 (adjournment for inquiry at first calling) has effect as if—
- (a) in subsection (1), for “subsections (2) and (3)” there were substituted “subsection (2)”,
  - (b) subsection (3) were repealed.

- (3) Section 145A (adjournment at first calling to allow accused to appear etc.) has effect as if—
- (a) in subsection (1), for “subsections (2) and (3)” there were substituted “subsection (2)”,
  - (b) subsection (3) were repealed.
- (4) Section 201 (power of court to adjourn case before sentence) has effect as if for subsection (3) there were substituted—
- “(3) The court may adjourn a hearing of a case under subsection (1) for such period as it considers appropriate.”.
- (5) Section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.) has effect as if for subsection (3) there were substituted—
- “(3) The court may adjourn a hearing under subsection (1) for such period as it considers appropriate.”.
- (6) The Criminal Justice (Scotland) Act 2003 applies in accordance with the modification in sub-paragraph (7).
- (7) Section 21 (sexual and certain other offences: reports) has effect as if subsections (9) and (10) were repealed.

## **PART 6**

### PROCEEDS OF CRIME

#### *Making of confiscation order: postponement due to coronavirus*

- (1) The Proceeds of Crime Act 2002 applies in accordance with the modifications in this paragraph.
- (2) Section 99 (postponement) has effect as if—
- (a) after subsection (4) there were inserted—
  - (b) after subsection (11) there were inserted—
- “(4A) For the purpose of subsection (4), “exceptional circumstances”, in relation to proceedings, includes the effect (whether direct or indirect) of coronavirus on the proceedings.”.
- “(12) In subsection (4A), “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).”.

**PART 7**

PRISONS AND YOUNG OFFENDERS INSTITUTIONS

*Power to release early*

- 5 24 (1) The Scottish Ministers may by regulations provide that a person of a description specified in the regulations is to be released from prison early on a date that is—
- (a) either—
    - (i) specified in the regulations, or
    - (ii) determined in accordance with provision made in the regulations, and
  - (b) not later than the regulations' latest release date.
- 10 (2) The Scottish Ministers may make regulations under this paragraph only if they are satisfied that making the regulations is necessary and proportionate, in response to the effects that coronavirus is having or is likely to have on a prison or prisons generally, for the purpose of protecting—
- (a) the security and good order of any prison to which the regulations would relate, or
  - (b) the health, safety or welfare of prisoners, or those working, in any such prison.
- 15 (3) A person is not to be released from prison by virtue of regulations under this paragraph if—
- (a) the person falls within sub-paragraph (4), or
  - (b) the governor of the prison within which the person is detained considers that the person would, if released, pose an immediate risk of harm to an identified person.
- 20 (4) A person falls within this sub-paragraph if the person is—
- (a) a life prisoner,
  - (b) an untried prisoner,
  - (c) a terrorist prisoner within the meaning of section 1AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993,
  - (d) due to serve a terrorism sentence within the meaning of section 1B of that Act but, by virtue of that section, is not yet serving it,
  - (e) liable to removal from the United Kingdom for the purposes of section 9 of that
  - (f) subject to a supervised release order under section 209 of the Criminal Procedure (Scotland) Act 1995,
  - (g) serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),
  - (h) the subject of proceedings under the Extradition Act 2003, or
  - (i) subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
- 25 30 35 (5) Regulations under this paragraph may make different provision for different purposes.



(6) In this paragraph—

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),

“governor”, in relation to a prison, means—

5 (a) the governor appointed for the prison under section 3(1A) of the Prisons (Scotland) Act 1989, or

(b) in the case of a contracted out prison, the director appointed for the prison under section 107(1)(a) of the Criminal Justice and Public Order Act 1994,

10 “latest release date” means a date specified in the regulations in question, which must be a date within the period of 180 days beginning with the day that the regulations are made,

“life prisoner” means a person—

(a) who is serving a sentence of imprisonment for life,

(b) who is detained without limit of time or detained for life,

15 (c) who is subject to an order for lifelong restriction made under section 210F of the Criminal Procedure (Scotland) Act 1995,

(d) to whom section 1A(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 applies,

“prison” means—

20 (a) a prison within the meaning of section 43 of the Prisons (Scotland) Act 1989, and

(b) a young offenders institution within the meaning of section 19(1)(b) of that Act,

25 “untried prisoner” means a person who, whether or not in prison for any other reason, is in prison—

(a) having been committed for examination or trial on a criminal charge,

(b) by virtue of remand in custody under the Extradition Act 2003,

(c) by virtue of detention under schedule 2 or 3 of the Immigration Act 1971, or

30 (d) following conviction and awaiting sentence.

*Parliamentary scrutiny of regulations under paragraph 24*

25 (1) Regulations under paragraph 24 are subject to the affirmative procedure, unless sub-paragraph (2) applies to them.

(2) This sub-paragraph applies to regulations if—

35 (a) they do not provide for the release of any person more than 180 days earlier than the Scottish Ministers would otherwise be required to release the person, and

(b) the Scottish statutory instrument containing the regulations includes a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is

necessary to make the regulations without their being subject to the affirmative procedure.

(3) Where sub-paragraph (2) applies to regulations—

5 (a) section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply to the regulations,

(b) the Scottish statutory instrument containing the regulations must be laid before the Scottish Parliament as soon as practicable after they are made, and

10 (c) the regulations cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the Scottish statutory instrument containing them is approved by resolution of the Parliament.

(4) In calculating the period of 28 days mentioned in sub-paragraph (3)(c), no account is to be taken of any time during which the Scottish Parliament is—

(a) in recess for more than 4 days, or

(b) dissolved.

15 (5) Regulations ceasing to have effect by virtue of sub-paragraph (3)(c) neither—

(a) affects anything done under the regulations before they ceased to have effect, nor

(b) prevents new regulations being made under paragraph 24.



# Coronavirus (Recovery and Reform) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about public health protection powers; to make provision about educational establishments and school consultations; to make miscellaneous public service reforms; to modify the law on tenancies; to make temporary modifications to the law in relation to the justice system; and for connected purposes.

Introduced by: John Swinney  
On: 25 January 2022  
Bill type: Government Bill

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