POLICY NOTE

THE CORONAVIRUS ACT 2020 (EARLY EXPIRY OF PROVISIONS) (SCOTLAND) REGULATIONS 2021

SSI 2021/439

The above instrument was made in exercise of the powers conferred by section 90(1) of the Coronavirus Act 2020. The instrument is subject to the affirmative procedure.

The purpose of the instrument is to expire early certain provisions in the Coronavirus Act 2020. Many provisions of this Act are time-limited to two years following it being enacted on 25 March 2020, after which time those provisions will fall. This instrument amends the expiry date for section 52 and Parts 1 and 3 of schedule 22 so far as they apply in Scotland, so that they expire at an earlier date, on 12 December 2021.

Legislative Background

1. The Coronavirus Act 2020 (the Act) received Royal Assent on 25 March 2020. The Act provided powers and measures which were considered necessary to protect the public, maintain essential public services and support the economy at the onset of the pandemic and the unprecedented challenges that it created. The Act contains provisions to contain and slow transmission of the virus, including powers under section 52 and schedule 22 to issue directions in relation to events, gatherings and premises.

2. As set out in section 89 of the Act, many provisions of the Act expire at the end of the period two years beginning with the day on which it was passed, in March 2022. Section 90 gives the Scottish Ministers powers to alter expiry dates by regulations, including expiring provisions at an earlier date.

3. Section 52 introduces schedule 22 which gives the Scottish Ministers direction-making powers in relation to events, gatherings and premises. These provisions were introduced at the onset of the pandemic, a global public health emergency unparalleled in living memory, and were designed to mitigate the impacts that it would bring. However, as the pandemic has progressed, the Scottish Government's knowledge and experience of which tools have been most appropriate to effectively tackle the risks that the virus brings have developed. A key tool has been health protection regulations made under schedule 19 of the Act. While the trajectory of the pandemic and the possible uses of schedule 22 have been difficult to predict with any certainty, to date the Scottish Government has found that policy aims that could be achieved through use of the powers under section 52 and schedule 22 can also be achieved through regulations made under schedule 19 of the Act.

4. Therefore, the Scottish Ministers have decided to expire section 52 and schedule 22 earlier than March 2022 through this instrument.

Policy Objectives

5. The Scottish Ministers remain committed to only retaining powers in the Act which are necessary and proportionate. Provisions within the Act and the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No 2) Act 2020 are subject to regular two monthly reviews, and their ongoing usage and necessity is reported to the Scottish Parliament through the Coronavirus Acts reports.

6. As was reported in the Coronavirus Acts: Ninth report to Scottish Parliament[1], a declaration of serious and imminent threat to public health was made on 25 March 2020 under schedule 22 (with a further clarificatory declaration made on 30 March 2020). This had the effect of starting a "public health response period" and "switching on" the schedule 22 powers. The views and agreement of the Chief Medical Officer were formally sought and secured prior to the making of the declaration in respect of the schedule 22 powers.

7. Although the schedule 22 powers have been "switched on" via the declaration made by the Scottish Ministers, they have not been used to make directions relating to events, gatherings and premises. Provision in that regard has instead been made by regulations made under schedule 19 of the Act[2]. Provision has also been made in regulations, also made under schedule 19 powers, to allow Local Authorities to give directions relating to specified premises, events and public outdoor places in their area[3]. If Scottish Ministers require to make provision during the current pandemic in relation to events, gatherings and premises, the schedule 19 powers remain available for use.

8. The Deputy First Minister and Cabinet Secretary for Covid Recovery confirmed the Scottish Ministers' intention to expire the schedule 22 powers in the UK Act to the Secretary of State for Health and Social Care on 20 September 2021.

Consultation

9. There has been no public consultation in relation to this instrument.

Impact Assessments

10. No impact assessments have been completed for this instrument as these are considered not to be required due to the powers within the provision that it expires having not been utilised.

Scottish Government
Directorate for Covid Co-ordination

November 2021

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[1] Coronavirus Acts: ninth report to Scottish Parliament - October 2021 - gov.scot (www.gov.scot)
[2] For example, in the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, as amended
[3] Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020, as amended