POLICY NOTE

THE CORONAVIRUS (SCOTLAND) ACT 2020 (EARLY EXPIRY OF PROVISIONS) (NO. 2) REGULATIONS 2021

SSI 2021/236

The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 13(1) of the Coronavirus (Scotland) Act 2020, and all other powers enabling them to do so . The instrument is subject to the negative procedure.

Summary Box

These Regulations make provision for the early expiry of certain provisions in Part 1 of the Coronavirus (Scotland) Act 2020 . It provides that the modifications set out at schedule 4, paragraph 18(2), 18(4) and 18(5) of that Act expire on 14 June 2021.

Legislative Background

The Coronavirus (Scotland) Act 2020 ("the Act") came into force on 7 April 2020 (except for one provision). The Act provides powers and measures which have helped to protect the public, maintain essential public services and support the economy in the face of the unprecedented and ongoing public health and economic challenges created by the pandemic. This includes measures to support the ongoing operation of the justice system, and support for public bodies in their response to coronavirus.

As set out under section 12 of the Act, Part 1 of that Act was initially due to expire on 30 September 2020. On 29 September 2020, the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020[1] came into force extending the expiry date of Part 1 of the Act to 31 March 2021. On 30 March 2021, the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021[2] came into force extending the expiry date of Part 1 of the Act to 30 September 2021.

Policy Objectives

The provisions in schedule 4, paragraph 18((2) and (4) of the Act make changes to the Parole Board (Scotland) Rules 2001 ("the 2001 Rules") with the effect that extended sentence prisoners recalled under section 17(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and serving the extension part of their sentence, can be considered under Part III of the 2001 Rules instead of Part IV. This has allowed these cases, where appropriate, to be heard at casework meetings by two members, rather than at an oral hearing.

The provisions at schedule 4, paragraph 18(5) of the Act removed the requirement for an oral hearing in a Part IV case unless the Parole Board considered that it was in the interests of justice to have one.

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[1] S.S.I. 2020/299
[2] S.S.I. 2021/152

These provisions were designed to increase resilience within the Parole Board by reducing the number of face-to-face hearings whilst Parole Board members and staff were working remotely during the pandemic and to enable Parole Board business to continue in the event of a reduction in availability of Parole Board members.

Further provision at paragraph 18(3) of schedule 4 of the Act, has allowed the Parole Board to continue to have oral hearings by video or tele conference. This measure has proved very successful with the Parole Board continuing to operate during the pandemic almost unaffected.

The Scottish Ministers are committed to expiring provisions of the Act as soon as it is appropriate to do so. In reviewing the provisions it was identified that they are no longer essential in order to support the Parole Board's ongoing operations and business continuity. Further, it was identified that given the ongoing consideration of cases under the 2001 Rules as modified by the provisions, expiry should occur as quickly as possible.

Expiry of these provisions will reinstate the provisions determining a prisoners' entitlement to an oral hearing in parole proceedings to the pre-2020 position.

Consultation

The Scottish Government consulted with the Parole Board for Scotland about the expiry of these provisions. The Parole Board is fully supportive and confirmed these provisions are no longer required.

Impact Assessments

There are no impact assessments for this SSI. However, as part of the two-monthly reporting to Parliament[3] on the provisions in the Act, impacts on rights and equality are regularly considered.

Financial Effects

The Cabinet Secretary for Justice and Veterans confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate

June 2021

[3] Section 15 of the Act requires Scottish Ministers to review the operation of the provisions of Part 1 of that Act in each reporting period, and every two months, report on the status of the provisions and make a statement that they are satisfied that the status of those provisions is appropriate.