POLICY NOTE

THE CORONAVIRUS (SCOTLAND) ACTS (AMENDMENT OF EXPIRY DATES) REGULATIONS 2022

SSI 2022/113

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 12(3) of the Coronavirus (Scotland) Act 2020[1] ("the First Scottish Act") and section 9(3) of the Coronavirus (Scotland) (No.2) Act 2020[2] ("the Second Scottish Act") (together – "the Acts"), and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Purpose of the instrument

To amend the expiry date of Part 1 of the Coronavirus (Scotland) Act 2020 and Part 1 of the Coronavirus (Scotland) (No.2) Act 2020 from the end of 31 March 2022 to the end of 30 September 2022.

Legislative background

2. The First Scottish Act came into force on 7 April 2020 (except for one provision) and the Second Scottish Act came into force on 27 May 2020. The Acts have provided 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 included protections for individuals in areas such as housing, measures to support the ongoing operation of the justice system, and support for public bodies in their response to Covid such as adjustments to deadlines for reports.

3. As set out under section 12 of the First Scottish Act, and section 9 of the Second Scottish Act, Part 1 of each of the Acts were due to expire on 30 September 2020, with the potential to be extended for two further periods of six months to 30 September 2021, subject to the approval of the Scottish Parliament. On 29 September 2020 and 30 March 2021, regulations came into force extending the expiry date of Part 1 of each of the Acts to 31 March 2021 and 30 September 2021 respectively[3]. Provisions in the Acts have been suspended or expired where they were no longer necessary or appropriate.

4. The Coronavirus (Extension and Expiry) (Scotland) Act 2021[4] ("the Extension and Expiry Act") amended the Acts to extend Part 1 of each Act until the end of 31 March 2022, with the potential for further extension by secondary legislation to the end of 30 September 2022, subject to the approval of the Scottish Parliament. In addition to extending provisions, the Extension and Expiry Act also expired certain provisions within the Acts which were no longer necessary or appropriate.

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1 Coronavirus (Scotland) Act 2020 (legislation.gov.uk)
2 Coronavirus (Scotland) (No.2) Act 2020 (legislation.gov.uk)
3 The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 (legislation.gov.uk) and The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021 (legislation.gov.uk)
4 Coronavirus (Extension and Expiry) (Scotland) Act 2021 (legislation.gov.uk)

5. The Extension and Expiry Act contained no provision to extend the Acts beyond the end of 30 September 2022.

Policy objectives

6. Part 1 of the each of the Acts can only be extended in their entirety and not on a provision by provision basis. This is done through regulations made following the agreement of the Parliament, and anything that should not be extended is therefore required to be expired through separate regulations.

7. The Scottish Government has taken the decision that, subject to the agreement of Parliament, Part 1 of each of the Acts should be extended to the end of 30 September 2022 and has laid these Regulations to amend the expiry dates accordingly. However, extension under these Regulations will not apply to all provisions currently in the Acts as some provisions have already been expired[5], while a separate instrument has been made and laid to expire early certain further provisions on 30 March 2022 – the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2022.

8. As required by section 12(6) of the First Scottish Act and section 9(6) of the Second Scottish Act, a separate Statement of Reasons has been prepared by the Scottish Government and laid with these Regulations, to set out reasons for making these Regulations.

9. The reporting requirement under section 15 of the First Scottish Act and section 12 of the Second Scottish Act will continue to require reporting whilst provisions in Part 1 of each of the Acts are in force. It is also important to note that, throughout the proposed six month extension period, if provisions are deemed to be no longer necessary during that time, they can be suspended or expired early. A suspended provision could subsequently be revived if this was considered necessary. Therefore, proposing that Part 1 of each of the Acts be extended at this time does not mean that all provisions covered by the extension must remain in place until the end of 30 September 2022. As it has done throughout the life of the Acts so far, the Scottish Government will keep the continued necessity of these provisions under review.

Consultation

10. A formal public consultation exercise has not been undertaken in relation to this instrument. However, as part of the ongoing review of the continued necessity of the provisions and the formal process required under the Acts to report to Parliament every two months on the operation and status of provisions, there has been ongoing stakeholder engagement and consultation on whether the provisions continue to be necessary.

11. Furthermore, many of the provisions which are proposed for extension have corresponding provision, though in some cases with amendments, in the Coronavirus (Recovery and Reform) (Scotland) Bill[6] ("the Recovery and Reform Bill"), which was introduced to the Scottish Parliament on 25 January 2022. The Scottish Government held a full 12-week public consultation on the Bill between 17 August and 9 November 2021. The

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5 Coronavirus Acts: eleventh report to Scottish Parliament (February 2022) - gov.scot (www.gov.scot)
6 Coronavirus (Recovery and Reform) (Scotland) Bill – Bills (proposed laws) – Scottish Parliament | Scottish Parliament Website

consultation paper, entitled "Covid Recovery: a consultation on public health, public services and justice system reforms"[7], was publicised widely and a dedicated webpage was established with supporting information[8]. The questions in the consultation paper invited respondents to provide their views on whether the provisions for each topic should be extended beyond March 2022. A total of 2,905 valid consultation responses[9] were received, of which 2,775 were from individuals and 130 were from organisations[10]. The Scottish Government has published a full consultation analysis report[11].

12. There are also provisions in respect of which detailed stakeholder engagement has been undertaken to arrive at the proposals for extension and this is set out in the Statement of Reasons.

Impact Assessments

13. No impact assessments have been completed for this instrument. However, as part of the assessment of the continued necessity of the provisions beyond the end of 31 March 2022, assessment of the rights and equality impacts of extension has been undertaken.

14. A range of Impact Assessments were undertaken for the First Scottish Act, Second Scottish Act, Extension and Expiry Act and the recently introduced Recovery and Reform Bill[12].

15. The Scottish Government's justification for why each individual provision in these Regulations continues to be needed beyond the end of 31 March 2022 is set out in the Statement of Reasons. The Scottish Government has assessed the potential impacts of extension and, in many cases, previous findings remain valid and no additional impacts are expected in the proposed extension of the provisions. Further information has been provided, where relevant and/or helpful, in the Statement of Reasons.

Financial Effects

16. The Deputy First Minister and Cabinet Secretary for Covid Recovery confirms that no BRIA is necessary. As outlined above, the Scottish Government considers that, in many cases, previous findings remain valid and no additional impacts are expected in the proposed extension of the provisions. Further information has been provided, where relevant and/or helpful, in the Statement of Reasons.

Scottish Government
Directorate for Constitution and Cabinet
February 2022

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7 Covid recovery: a consultation on public health, public services and justice system reforms - Scottish Government - Citizen Space
8 Coronavirus (Covid) legislation - gov.scot (www.gov.scot)
9 A total of 2978 responses were received, but 73 were identified as duplicates (submitted by duplicate email addresses) and removed during data cleaning. The most recent version of each response was kept.
10 Five organisations submitted a total of 11 responses. These were all included in the analysis as they were considered to represent different views across the organisations.
11 The consultation analysis report is linked to from this webpage - Coronavirus (Covid) legislation - gov.scot (www.gov.scot)
12 All of these Impact Assessments are linked to from this webpage - Coronavirus (COVID-19) legislation - gov.scot (www.gov.scot)