POLICY NOTE

THE CORONAVIRUS (SCOTLAND) ACTS (AMENDMENT OF EXPIRY DATES) REGULATIONS 2021

SSI 2021/XXX

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

The purpose of the instrument is 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 31 March 2021 to 30 September 2021.

Legislative background

2. The Coronavirus (Scotland) Act 2020 (the "first Scottish Act") came into force on 7 April 2020 (except for one provision) and the Coronavirus (Scotland) (No.2) Act 2020 (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 includes 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 coronavirus (COVID-19) such as adjustments to deadlines for reports and accounts.

3. As set out under section 12 of the first Scottish Act, and section 9 of the second Scottish Act, Part 1 of both Acts were 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 both Acts to 31 March 2021. On 11 February, the Cabinet Secretary for Constitution, Europe and External Affairs advised the Scottish Parliament that the Scottish Ministers were conducting the analysis necessary to determine whether the Acts should be extended beyond 31 March 2021**2**.

4. In the decision on whether Part 1 of the two Acts should be extended, Scottish Ministers have given careful consideration to the need to balance the needs of many stakeholders and partners who wish to see the provisions remain available, against the commitment given when the Acts were introduced that the provisions would not remain in place unless they were needed. In view of the continuing risk of the virus, and in particular in light of the new, more transmissible variant of the virus, the assessment that Ministers

1 https://www.legislation.gov.uk/ssi/2020/299/contents/made
2 https://www.parliament.scot/parliamentarybusiness/report.aspx?r=13117&i=118750

have arrived at is proportionate and appropriate to the scale of that risk.

Policy objectives

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

6. The Scottish Government has taken the decision that, subject to the agreement of Parliament, Part 1 of both Acts should be extended to 30 September 2021 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**3**, while a separate instrument has been made and laid to expire early certain further provisions on 30 March 2021 - the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2021. Furthermore, the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021**4**, if approved by Parliament, will also expire some provisions under the second Scottish Act from 29 March 2021 and make these permanent.

7. 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 prior to laying these Regulations, to set out reasons for making these Regulations.

Consultation

8. A formal public consultation exercise has not been undertaken in relation to this instrument due to the timescales in which decisions on extension of the Acts and expiry of provisions not to be covered by an extension have had to be made. However, the Scottish Government has informally consulted with public bodies and other stakeholders on development of the approach to extension or expiry of measures contained in the Acts, and further detail of this is provided in the Statement of Reasons for making these Regulations.

Impact Assessments

9. No impact assessments have been completed for this instrument. However, as part of the assessment of the continued necessity of the provisions beyond the 31 March 2021 expiry date of Part 1 of both Acts, assessment of the rights and equality impacts of extension has been undertaken.

10. Equality Impact Assessments and Child Rights and Wellbeing Impact Assessments were undertaken for both of the Acts as part of the development of the Bills which were introduced to Parliament on 31 March and 11 May, respectively. The human rights impacts were summarised in the Policy Memorandums for each of the Acts.

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3 The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 - https://www.legislation.gov.uk/ssi/2020/249/contents/made
4 https://www.legislation.gov.uk/sdsi/2021/9780111049099/contents

11. For some provisions, there have been no significant changes since the time of the introduction of the Bills, and no additional rights or equality impacts are expected in the proposed extension of the provisions. For other provisions, particularly those which are considered to have more significant impacts on rights and equality, a review of the original impact assessments has been carried out as part of determining the proposed approach to extension. Detail of this in relation to particular provisions is set out in the Statement of Reasons for making these Regulations.

Financial Effect

12. The Cabinet Secretary for Constitution, Europe and External Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Constitution and Cabinet

February 2021