

# **Coronavirus (Extension and Expiry) (Scotland) Bill**

## **Child Rights and Wellbeing Impact Assessment**

**June 2021**



**Scottish Government**  
Riaghaltas na h-Alba  
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## Child Rights and Wellbeing Impact Assessment: Stage 1 Screening - key questions

### 1. What aspects of the policy/measure will affect children and young people up to the age of 18?

The Coronavirus (Extension and Expiry) (Scotland) Bill (“the Bill”) makes provision to expire the following provisions in the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 (“the Scottish Acts”), which will affect children and young people, as they are no longer deemed necessary to have in place beyond 30 September 2021:

- Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020);
- Children and vulnerable adults: children’s hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020);
- Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020);
- Community orders (Section 5 and schedule 4 paragraphs 12; 14; 15(1) reference to “and drug treatment and testing orders.”; 15(6) reference to “or drug treatment and testing order” to expire; 16 definition of “drug treatment and testing order”; definition of “relevant local authority” 16(b) and definition of “specified period” of the Coronavirus (Scotland) Act 2020);
- Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020);
- Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020);
- Coronavirus Carer’s Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020);
- Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020);
- Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020).

The Bill also amends the expiry dates of Parts 1 of the Scottish Acts, with the effect that the following provisions in the Scottish Acts, which will affect children and young people, will be available beyond 30 September 2021 as the Scottish Government considers these remain essential in order for public services to be able to continue to discharge their functions in the way they were intended to:

- Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020);
- Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020);
- Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020);
- Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020);
- Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020);
- Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020);
- Exceptions to the rule that hearsay evidence is inadmissible (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020);
- Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020);
- Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020);
- Legal Aid (Section 5 and schedule 4: paragraphs 21 – 23 of the Coronavirus (Scotland) Act 2020);
- Duration of planning permission (Section 8 and schedule 7: paragraphs 8 – 10 of the Coronavirus (Scotland) Act 2020) and Listed buildings and conservation areas: consents (Section 5 and schedule 4: paragraph 2 of the Coronavirus (Scotland) (No.2) Act 2020);
- Land registration: electronic delivery of copies to Registers of Scotland (Section 8 and schedule 7: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020 and Section 5 and schedule 4: paragraphs 3-4 of the Coronavirus (Scotland) (No.2) Act 2020);
- Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except those provisions creating a 7-day notice periods for certain tenancies);
- Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020);
- Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020);
- Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020);

- Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020);
- Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020);
- Criminal Justice - Arrangements for the custody of persons detained at police stations (Section 3 and schedule 2: paragraphs 2 – 5 of the Coronavirus (Scotland) (No.2) Act 2020);
- Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020);
- Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020);
- Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020);
- Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020);
- Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020).

## **2. What likely impact - direct or indirect - will the policy/measure have on children and young people?**

Provisions to be expired on 30 September 2021, resulting in a return to pre-COVID legislative arrangements

Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

Section 3 and Schedule 2, paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020 remove the prohibition against benefitting from more than one moratorium on diligence in any 12 month period. The intention behind this amendment was to ensure that those who had recently had a moratorium prior to the on-set of the pandemic were not excluded from the effect of the changes. This provision has now been in place since 7 April 2020 and the policy rationale to protect those who had utilised a pre-pandemic 6 week moratorium no longer exists.

The expiry of these provisions will serve to ensure that those who are owed sums are not unduly prejudiced by repeat moratorium applications that could result in sequential 6 month periods of protection from any debt recovery action.

This extension of the existing moratorium on diligence and bankruptcy from six weeks to six months remains in force and this prevents creditors from taking action against individuals who have financial difficulties, thus allowing those individuals time to find advice on how best to deal with their debts and, in current circumstances, also to recover from time-limited income shocks without having to

take serious steps like applying for bankruptcy. This creates a 'breathing space' in which an individual can seek money advice, and find the right longer term solution for their circumstances.

The costs of problem debt are felt strongly by families. StepChange, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances. There are concerns that the economic consequences of the Covid-19 pandemic may result in a significant number of additional families facing issues of problem debt. Whilst these provisions are being expired (since the policy rationale to protect those who had utilised a pre-pandemic 6 week moratorium no longer exists), paragraphs 1 and 4 of schedule 2 are being extended which will help to continue to alleviate these additional pressures on families.

Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

Expiry of these provisions in the Coronavirus (Scotland) Act 2020 will mean that Children's Hearings will revert back to pre-COVID procedures with a strengthening of rights as a result of bringing to an end the current temporary extensions to timescales. This means that quicker decisions and outcomes will be reached. To avoid the possibility of confusing children and families, in relation to child protection orders, appeals, and compulsory supervision orders, it will be necessary for temporary transitional requirements to be put in place to protect rights and ensure transparency around child protection and children's hearing administration post-30 September 2021. These provisions will be extremely short-term and will relate to orders already issued and appeal timescales already applied.

The temporary powers in the Coronavirus (Scotland) Act 2020 also permit electronic authentication of children's hearing decisions which have a limited positive impact on children as they result in swifter notification of hearing outcomes. The decision of a hearing, and reasons for reaching that decision, as well as other reports, orders or warrants which the hearing issues, must be signed by the chairing member of the hearing. The children's reporter must send notification of the decision and reasons, copies of orders issued etc. to the affected child and their relevant persons. These provisions enable decisions to be made remotely with the panel member in a different place from the children's reporter meaning the paperwork will not have to be signed by hand.

The provisions also allow decisions or orders to be authenticated electronically by the chairing member of a children's hearing **or** the children's reporter. The chairing member may not have the technological capacity to remotely record and authenticate documents, therefore, the children's reporter is able to do that as a result of the provisions. This ensures maximum flexibility so that the reporter can still notify decisions, reasons and orders as promptly as possible to those who are affected.

As a result of benefits seen in relation to electronic authentication and virtual children's hearings, separate legislation<sup>1</sup> has been made via amendments to the Children's Hearings Rules of Procedure – coming into force 26 July 2021 – this will prove to be a long term benefit for children. Relevant impact assessments accompany that legislation<sup>2</sup>.

Covid-19 means that it is not possible for children's hearings to be carried out in the usual format – it is anticipated that virtual hearings or hybrid hearings (some participants in physical attendance and some virtually) will continue for some time. Wider evaluation and service user feedback needs to be considered for the longer term.

Expiry of the looked after children provisions in the Coronavirus (Scotland) Act 2020 will mean that placement limits for foster carers will revert to three. The amendments to the Looked After Children's Regulations (2009) come into force in September 2021 and makes provision for a new exception to fostering placement limits in individual circumstances where this promotes the child's welfare and wellbeing. This will further strengthen sisters' and brothers' relationships supporting them to remain together where it is safe to do so. It will be necessary for temporary transitional requirements to ensure children's rights to remain in the foster placement they have become settled in, after 30 September.

It is anticipated that the expiry of the temporary provisions for kinship care, reverting to earlier regulation, will strengthen the rights of children and their carers requiring earlier assessment of kinship arrangements.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

The Adults with Incapacity (Scotland) Act 2000 ("AWI Act") classifies an adult as being a person who has attained the age of 16. Young people aged 16-18 are unlikely to be affected by expiry of guardianships as these are usually granted for 3 years or more, but it is possible. Section 47 medical certificates are ordinarily granted for a year, so it is more likely that 16-18 year olds will be affected. The provisions paused the countdown of time towards expiry of the guardianship and section 47 certificate. The 'clock' was then started again on suspension of the provisions at the end of September 2020. Those 16-18 year olds subject to a guardianship or a section 47 certificate will be subject to those orders or certificates longer than they would ordinarily be. There is the ability under the AWI Act to bring an order or certificate to an end if it is no longer required.

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

These provisions relax the timescales which apply for Social Security Scotland

<sup>1</sup> [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2021](#)

<sup>2</sup> [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2021 - Impact assessments](#)

("the Agency") making re-determinations.

Evidence suggests that these provisions brought some benefit in allowing the Agency to be able to manage redeterminations with reduced capacity as a result of coronavirus and by allowing clients additional time to provide information required for a redetermination to be made. This had the knock-on benefit of preventing redeterminations which were delayed by coronavirus, and therefore not completed by the original deadline that existed without the extension, going to the First Tier Tribunal unnecessarily.

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the coronavirus pandemic for redetermination timescales. The provisions to be expired will continue to have effect for redeterminations commenced ahead of the expiry, by warrant of the Interpretation and Legislative Reform(Scotland) Act 2010. There will be no separate impact on children and young people comparative to other clients as a result of the expiry.

Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government anticipates that expiry of the 7-day notice period for student residential tenancies entered and occupied prior to 27 May 2020 will not have a significant impact on children's rights and well-being.

The seven day notice period was for a particularly challenging period in respect of travel restrictions and the move to blended learning last year – the social, economic and health pressures faced by students now are not the same as they were a year ago so it is now considered that the 28 day notice period provides sufficient protection. The majority of student tenancies are on an annual basis, so the numbers of student tenancies which were entered into prior to 27 May 2020 will now be significantly lower. The 28 day notice period, therefore covers all students in halls and PBSA and there is no detriment to the likely very small numbers of students to whom the seven day notice still applies – all students in halls and PBSA can still terminate their lease but for a small group they will have to give 3 weeks more notice than before. It is not considered that this extra 3 weeks creates a disproportionate impact on the students affected. The 28 day notice period aligns with students renting in the private sector giving all students the same rights to terminate their lease.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

Payment was made successfully to over 80,000 unpaid carers at the end of June 2020. Around 83,000 carers are expected to benefit once all backdated payments are made. Coronavirus Carer's Allowance Supplement ("CCAS") mainly affected young people (16 and over) who are in receipt of Carer's Allowance ("CA"), with indirect impacts on disabled children and young people who are cared for by someone in receipt of CA.

It is not anticipated that expiry of these provisions will have an adverse impact on children and young people. The Scottish Government is content that backdating of CCAS can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force. Further legislation will be introduced to allow for provision to be made for a subsequent increase to carer's allowance supplement for the period of 1 October 2021 to 31 March 2022.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

These temporary provisions were introduced to enhance the reporting of inspections and of deaths in care homes, primarily care homes for adults and older people. This is because evidence has shown that older people are more at risk of being seriously affected by coronavirus and more at risk of death as a consequence.

It is therefore not anticipated that expiry of these provisions will have an adverse impact on children and young people.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

In Scotland, young people receive a number of rights at 16 years old, such as the right to marry or register a civil partnership. The number of young people exercising their right to marry is low. In 2019, there were 26,007 marriages. Of these, 33 were young people aged 16-19 years old.<sup>3</sup>

The Scottish Government has not identified any differential impact on children and young people arising from the expiry of the provision as the policy underpinning the provision can continue to be delivered after the provision has expired. Article 12 of the European Convention on Human Rights ("ECHR") already protects the right of men and women of marriageable age to marry. The expiry of the provision will not affect either the existence of the ECHR protection or the Scottish Government's policy to ensure the continued availability of marriage and civil partnership.

Provisions deemed essential to be extended beyond 30 September 2021 to continue responding appropriately to the public health emergency

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

Tenants in both the private and social rented sectors continue to find themselves in financial difficulty due to the pandemic and unable to meet their obligations under their tenancy agreement. Under current housing legislation, this places them at risk of having their home repossessed by their landlord at a time when

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<sup>3</sup> [List of Data Tables | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk)



housing, health and other public services are under acute and ongoing pressure. More broadly, there is also a need to prevent the unnecessary movement of tenants during this unprecedented situation to support measures to inhibit the progress of the virus. As recovery progresses some people may experience hardship as support schemes are wound down and there are possibilities that some areas could return to higher restriction levels at short notice as outbreaks of concern occur.

To protect tenants from being evicted from their homes during the ongoing pandemic, the Scottish Government is continuing provisions within the Coronavirus (Scotland) Act 2020 to:

- extend the notice to leave period for private rented sector landlords and the notice for recovery of possession for social landlords. The extended notice periods are either for 6 months (in most cases) or 3 months for certain tenant conduct grounds relating to antisocial or criminal behaviour and where a landlord or their family member need to move into the property. No change will be made in relation to where eviction is sought on the ground that a property is vacant as it will have no impact on dealing with the current crisis. No change is also made in relation to the alternative accommodation ground which applies to assured tenancies, nor in relation to short secure tenancies at the end of their term involving anti-social behaviour;
- make all grounds for repossession discretionary so that the Tribunal can consider the full facts of the case when deciding whether to grant an eviction.

Over recent years the private rented sector has seen an increasing number of families calling it home. Based on the latest published Scottish Household Survey (SHS) data, there are an estimated 70,000 family households out of 340,000 in the private rented sector in Scotland. In the social rented sector there are 150,000 family households out of 580,000. 'Families' are assumed to include large family, small family and single parent household categories of the SHS.

SHS data also highlights that, 11% of social rented households were single parent families, 9% were small families and 5% were large families. These are broadly similar to that of the private rented sector. Many of these family households will be significantly impacted by the current Covid-19 pandemic, therefore the provisions being taken forward to protect renters from eviction during this time are highly likely to have a positive impact on both children and young people residing within these rented family homes.

Should these legislative measures not be continued, many families with children may face being evicted from their rented properties during the ongoing health crisis and this would therefore significantly increase the chances of households becoming homeless. Therefore not taking forward this temporary legislative action would likely have a detrimental impact on children's and young people's rights.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

The costs of problem debt are felt strongly by families. StepChange, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances. There are concerns that due to the circumstances surrounding the Covid-19 pandemic, there may be a number of additional families who might enter problem debt. This Bill will therefore extend the moratorium on debt relief to alleviate these additional pressures.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case cannot be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing, although not with the use of the ground of referral that the child has committed an offence. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals aged from 16 to 17 who commit a criminal offence may be dealt with by the courts.

Children and young people are also victims of crime and may be required to give evidence in criminal proceedings. Increasingly, there is a move to ensure that, where they are due to give evidence in the most serious cases, they will be allowed to have it pre-recorded in advance of the trial. This will usually be by the special measure 'evidence by commissioner'. Joint Investigative Interviews and other methods can be more routinely used as evidence in chief, increasing the use of pre-recorded evidence.

These measures enable social distancing and are required as justice institutions will face acute staffing pressures throughout the course of the pandemic. These provisions are designed to ensure the need for physical attendance at court is removed wherever possible; and electronic means are deployed. Greater flexibility is also built in for applicable time limits; and for the hearing of custody cases.

Insofar as these provisions underpin the continued operation of the justice system, they assist in upholding the rights of children and young people who have been victims of crime and those who offend. Measures relating to electronic means of attendance are in line with moves to allow children and vulnerable witnesses to give their evidence in criminal trials and to participate in tribunal hearings within a safe, sensitive and secure environment.

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child

aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case cannot be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

The increase in the maximum fiscal fine that COPFS can offer as an alternative to prosecution may have a financial impact on children aged 16 to 17 who are offered and accept to pay a fine rather than being prosecuted in the courts.

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case cannot be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

The provision enables custody proceedings to be heard in any sheriff court in Scotland by a sheriff of any sherriffdom no matter where the alleged offence took place during the coronavirus pandemic.

The provision will impact children and young people only in instances where the person has been arrested for a criminal offence and held in police custody prior to an appearance in court. However, in accordance with section 22 of the Criminal Justice (Scotland) Act 2016, generally persons under 16 (and 16 and 17 year olds subject to compulsory supervision orders) are to be kept in a place of safety until the person can be brought before the court and this place of safety must not be a police station unless certain conditions are met.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case cannot be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

Children and young people are also victims of crime and may be required to give evidence in criminal proceedings. Increasingly, there is a move for this to be done via pre-recording evidence; through Evidence by Commissioner, Joint Investigative Interviews and other methods which avoid a child or young person having to attend court.

Exceptions to the rule that hearsay evidence is inadmissible (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case cannot be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

Children and young people are also victims of crime and may be required to give evidence in criminal proceedings. Increasingly, there is a move for this to be done via pre-recording evidence; through Evidence by Commissioner, Joint Investigative Interviews and other methods which avoid a child or young person having to attend court.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

The policy could directly impact on individuals aged 16-18 who are subject to a community order, although the numbers impacted will be small due to the composition of the offending population - young people are proportionately less likely to receive a Community Payback Order ("CPO") with evidence showing that 16-17 year olds made up only 2% of individuals who received a CPO in the 2019/20 period.

The policy could directly impact on individuals age 16-18 who are subject to a community order. However, as this policy is not targeted at a specific age group, rather all those subject to community sentences, it is not expected to impact those individuals adversely in terms of the protected characteristic of age.

Additionally, the specific risks and needs of people aged 16-18 subject to CPOs will be taken into account by Justice Social Work ("JSW") and youth justice services should these provisions impact them.

JSW will continue to prioritise cases where any risk to children is present, and will work in close collaboration with child and adult protection and domestic abuse services to ensure the safety and wellbeing of children.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

These provisions in the Coronavirus (Scotland) Act 2020 enabled the Scottish Ministers to specify a class of persons who would be eligible for release, who would be further defined by regulation laid before Parliament.

Ministers have deemed that use of the early release power was necessary and proportionate on one occasion since the Coronavirus (Scotland) Act 2020 came into force. Regulations were brought before Parliament and a process was given effect in May-June 2020 to release a limited number of short-sentence prisoners who were already close to their scheduled released date. The scheme was limited to those sentenced to 18 months or less and who on 4 May had 90 days or less left to serve. Further exclusions aimed at ensuring public protection were included in the regulations and by the completion of the release process, 348 of the 445 considered were released early.

The early release regulations made wide provision for eligibility based on sentence length and time remaining in custody, so that eligibility for release could include young people held within the prison estate. Those in prison custody who were designated as young offenders were considered as eligible for release, providing that they fulfil the rest of the criteria set out in the regulations. In practice, one individual aged between 16-17 was released under these provisions in the May 2020 process. Consistent with not selecting for release based on protected characteristics, there was not priority for release given to those with any particular protected characteristics. The additional capacity (space and staff capacity) that release provided, meant prisons were able to configure their services accordingly to match any specific needs of particular groups in their care at that time. Future uses of the power would also need to be constructed in such a way as not to create any unlawful discrimination based on age.

In order to ensure that suitable contingency arrangements remain available for a range of possible scenarios, the Government needs to retain the ability to respond to potential future developments in coronavirus. This might include the impact of emerging new variants which could necessitate further action in the form of prison release to support the safe operation of prisons and to protect the health and wellbeing of prison staff and prisoners. In such circumstances, even with the mitigating action which the Scottish Prison Service (SPS) has continued to take, there is risk that our prisons could not continue to operate safely with increased population levels, or heightened public health restrictions. In such emergency circumstances, there is a need to have effective statutory options to respond, including the potential to release prisoners early from custody.

It is recognised that there are particular challenges in relation to the release of young people who are in custody. Specifically, pre-release planning has particular importance for this group of individuals and there is a need to ensure that the appropriate support is available in the period preceding, and then following, release. The previous early release process had a particular focus on an enhanced processes for notification of those eligible for release, so that statutory and third sector providers could make arrangements for support on release. This

was considered to be in keeping with the ethos of the Whole System Approach (WSA) to young people with the opportunity for continuity of approach between service providers.

Governors have a duty of care for those in custody and in any future release process they would be able to consider the circumstance of a proposed release of a young person to establish any vulnerabilities that might need to be considered as part of release. This might ultimately lead to a veto if the risk of harm pertained to the young person themselves. This aspect of the legislation provides a form of safeguard against creating an eligibility for release for a young person where it may not be in their best interests to leave at that time, and this arrangement would continue to apply under any future emergency early release process.

Future early release of adult prisoners may have an impact on households and family members in the community (including children and young people), potentially positive or negative. The regulations applied to the May 2020 process specifically excluded prisoners sentenced for domestic abuse and harassment offences, and the Governors' veto could prevent the release of specific prisoners where their release presents a risk to an identified person (which could further reduce the risk of domestic violence or risk to previous victims). However, for some households, children and young people, the early release may provide a benefit in terms of family life, household finances, or childcare and caring responsibilities – which may be particularly challenging if social distancing / lockdown measures are in place.

Legal Aid (Section 5 and schedule 4: paragraphs 21 – 23 of the Coronavirus (Scotland) Act 2020)

Solicitors and advocates who deliver legal aid services may suffer financial detriment as a result of COVID-19, with a reduction in criminal trials, criminal activity and civil demands impacting on income. A slowdown in income could have a significant negative impact on the ability of legal aid providers to continue. The risk is that once the justice system returns to whatever a new normal is, there will be insufficient capacity in the legal profession to deliver legal aid services. This will directly impact on the criminal justice system with implications on an accused person's right to a fair trial and legal counsel. In civil law a reduction in legal aid practitioners will impact on a person's ability to protect and defend their rights including areas of discrimination, housing and employment. It is expected there may be an increase in those seeking advice in these areas. The legal profession are supportive of these measures. It is not anticipated that this will have a negative impact on children or young people.

Land registration: electronic delivery of copies to Registers of Scotland (Section 8 and schedule 7: paragraphs 11-14 of the Coronavirus (Scotland) Act 2020 and Section 5 and schedule 4: paragraphs 3 and 4 of the Coronavirus (Scotland) (No.2) Act 2020)

The measures will have no direct or indirect impact on children and young people as the digital submission systems are open only to solicitors who are adults, with the very small number of individuals who wish to carry out their own conveyancing

on behalf of children still able to do so, with those individuals submitting paper deeds.

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) which are being expired)

The extension of a temporary 28 day notice to leave period for students living in Purpose Built Student Accommodation (PBSA) and Halls of Residence to enable them to end their accommodation contract early will:

- ensure that students who have left their accommodation, or have been unable to return to it, due to Coronavirus restrictions and who wish to end their contract early, are able to do so; and
- bring the tenancy rights of students in PBSA/Halls of Residence in relation to notice periods in line with those students residing in the mainstream private rented sector.

Typically, the majority of those who reside in student accommodation are women. Almost half of students in halls are from outside the UK and hence, PBSA and Halls of Residence are more likely to be ethnically diverse. The majority of students residing in PBSA and halls of residence are 21 and under.

The 28 day notice period aligns with students renting in the private sector giving all students the same rights to terminate their lease. It should be noted that, following the expiry of the 7-day notice period for tenancies entered prior to 27 May 2020 (paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4)), the 28-day notice period will apply to those tenancies instead. All student residential tenancies will then have a notice period of 28 days.

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Tenants in both the private and social rented sectors continue to find themselves in financial difficulty due to the pandemic and unable to meet their obligations under their tenancy agreement. Even under the emergency extended notice period provisions this places them at risk of having their home repossessed by their landlord at a time when housing, health and other public services are under acute and ongoing pressure. More broadly, there is also a need to prevent the unnecessary movement of tenants during this unprecedented situation to support measures to inhibit the progress of the virus. As recovery progresses some people may experience hardship as support schemes are wound down and there are possibilities that some areas could return to higher restriction levels at short notice as outbreaks of concern occur.

To support tenants experiencing difficulty with rent payments, it is the Scottish Government's intention to extend provisions within the Coronavirus (Scotland) Act 2020 to:

- require landlords seeking repossession on the grounds of rent arrears to work with their tenants towards resolution, sign-posting them to sources of help and advice;
- provide the First Tier Tribunal the discretion to consider a landlord's action in determining whether a repossession is reasonable.

Over recent years the private rented sector has seen an increasing number of families calling it home. Based on the latest published Scottish Household Survey (SHS) data, there are an estimated 70,000 family households out of 340,000 in the private rented sector in Scotland. In the social rented sector there are 150,000 family households out of 580,000. 'Families' are assumed to include large family, small family and single parent household categories of the SHS.

SHS data also highlights that, 11% of social rented households were single parent families, 9% were small families and 5% were large families. These are broadly similar to that of the private rented sector. Many of these family households will be significantly impacted by the current Covid-19 crisis, therefore the provisions being taken forward to protect renters from eviction during this time are highly likely to have a positive impact on both children and young people residing within these rented family homes.

Should these legislative measures not be continued, many families with children may face being evicted from their rented properties during the ongoing health crisis and this would therefore significantly increase the chances of households becoming homeless. Therefore not taking forward this temporary legislative action would likely have a detrimental impact on children's and young people's rights.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

Sector data shows that the number of staff aged up to 20 employed in the Social Care sector to be very low - <2.5% across every sector of the workforce.

Other than very low numbers potentially eligible to claim, most of the impacts to children will be positive. For example, children will feel the benefits of an eligible parent being able to apply for this financial support.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

To the extent that children and young people are living in households facing the burden of unsustainable debt, they will benefit indirectly from measures that increase the minimum debt threshold that can give rise to creditor petition bankruptcy being pursued through the courts. The provisions provide greater protection to households experiencing issues of problem debt and provides additional breathing space to identify an appropriate solution. The costs of problem debt are felt strongly by families. StepChange, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to



relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances. There are concerns that due to the circumstances surrounding the coronavirus pandemic, there may be a number of additional families who might enter problem debt.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

Under the Mental Health (Care and Treatment) (Scotland) Act 2003 a patient aged 16 or over may choose an individual to be their named person. A named person represents the interests of and supports a patient subject to proceedings under the 2003 Act. These provisions temporarily removes the requirement for a person to have their signature witnessed by a prescribed person when they agree to become a named person.

Although these temporary changes do not apply to those under 16, the provisions ensure that patients still have the ability to choose their own named person, while minimising any delays in the process of nomination caused by the pandemic. This in turn will reduce any delays in having the patient involved in their care and treatment decisions.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

These provisions remove the time limit on the permitted length of a single adjournment in summary cases after first calling where the accused is not in custody, and in all cases involving an offence punishable with imprisonment to allow inquiries to be made prior to sentencing for a report on the offender's physical or mental condition or pending a decision regarding an alleged breach of a court order. The purpose of these provisions is to avoid additional court hearings in order to further adjourn cases where it is anticipated at the outset that the pandemic means it will not be possible for further inquiries to be completed within the current maximum period for a single adjournment. These changes apply in cases involving children who have reached the minimum age for prosecution (12) in the same way as they do to adults, but it should be noted that, in line with the Lord Advocate's guidelines on the reporting of offences committed by children, the great majority of offences alleged to have been committed by children under the age of 16 are reported to the Children's Reporter rather than being prosecuted in the criminal courts.

Criminal Justice - Arrangements for the custody of persons detained at police stations (Section 3 and schedule 2: paragraphs 2 – 5 of the Coronavirus (Scotland) (No.2) Act 2020)

The provisions to allow the Scottish Ministers to make arrangements for Prisoner Custody Officers will not impact on children and young people.

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case can't be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

These provisions impact children and young people only in instances where the person released on an undertaking is a person aged 12 years or more. It should be noted, however, 'Lord Advocate's Guidelines: Liberation by the Police Covid-19 or Coronavirus' says while children can be released on undertakings, the necessity and proportionality of imposing conditions on a child must be considered carefully before applying any liberation condition to a child.

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

Inclusion of the effect, direct or indirect, of coronavirus on proceedings as an exceptional circumstance in relation to the proceedings for the purposes of section 99(4) of the Proceeds of Crime Act 2002 will have no impact on the rights of children or young people.

Extension of the specified period for payment of a confiscation order where payment cannot be made for reasons relating, directly or indirectly, to coronavirus within 12 months of the date that the order was made and disapplication of interest where an extension is granted may have an impact on the rights of children and young people under Article 9 of the UNCRC.

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision permits documents which would otherwise have been displayed on the walls of the court to instead be displayed on the Scottish Courts and Tribunal Service. This is a key measure to provide for the continuation of civil and commissary business, aspects of which would otherwise be unable to proceed during the coronavirus pandemic. It is not anticipated that the extension of this provision will have an adverse impact on children and young people.

Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision enables the Care Inspectorate to issue notices by electronic means in as safe and secure a way as possible, as the expiry of these

provisions would result in the requirement for physical processes to once again take effect. It is not anticipated that the extension of this provision will have an adverse impact on children and young people.

Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

The provisions create the opportunity for Scottish notaries public, solicitors and advocates, guided by their professional bodies, to adopt alternative appropriate means of executing documents and oaths etc. which have a “physical presence” requirement. For example, notaries public may now execute remotely, by electronic means such as live video connection. It is not anticipated that this will have a negative impact on children or young people.

**3. Are there particular groups of children and young people who are more likely to be affected than others?**

Provisions to be expired on 30 September 2021, resulting in a return to pre-COVID legislative arrangements

Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

The provision that is to be expired introduced a waiver on the prohibition of benefitting from more than one application for moratorium protection within a 12 month period. The original policy rationale for these provisions was to protect those who had utilised a pre-pandemic 6 week moratorium and that rationale no longer exists. However, the extended moratorium period of 6 months remains in force and this prevents creditors from taking action against individuals who have financial difficulties, thus allowing those individuals and families time to find advice on how best to deal with their debts. Children in impoverished households with debt are five times more likely to have low well-being than those in households without debt problems, according to a 2016 report by The Children’s Society. In 2014, StepChange estimated 1.4m UK families, with 2.4m dependent children, were living in problem debt. Having a number of different creditors was found to significantly increase stress in impoverished households, as different creditors may have different demands and may all call for repayment at the same time. Distressing experiences, such as visits from bailiffs, fear of eviction and stress caused by arguing parents trying to make ends meet, were found to have a direct impact on children’s mental well-being.

Children and vulnerable adults: children’s hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

All children who are participating in a children’s hearing or pre-hearing panel will be affected by these changes with a return to earlier decisions and therefore implementation of support, this includes those from secure or residential care, in foster or kinship care and child protection matters. These children and young people are the most vulnerable in Scotland and it is important the supports around them are able to deliver what is in the best interest of the child in these

unprecedented times and ensure their legal orders remain in place.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

By the nature of the legislation the particular group of young people affected will be those with learning disabilities, although it is not expected that there will be many due to the narrow age range of 16-18 years where this is applicable to the AWI Act.

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

It is not anticipated that expiry of these provisions will have an adverse impact on the children and young people who apply to Social Security Scotland for assistance, nor any particular subset of those children and young people.

Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated that the expiry of these provisions will have an adverse impact on children and young people in halls and PBSA. The 28 day notice period, therefore covers all students in halls and PBSA and there is no detriment to the likely very small numbers involved still on a seven day notice – all students in halls and PBSA can still terminate their lease but for a small group they will have to give 3 weeks more notice than before. It is not considered that this extra 3 weeks creates a disproportionate impact on the students affected. The 28 day notice period aligns with students renting in the private sector giving all students the same rights to terminate their lease.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

Disabled children and young people aged up to 18 cared for by CCAS recipients are more likely to have been positively affected than other groups. It is not anticipated that expiry of these provisions will have an adverse impact on children and young people. Further legislation will be introduced to allow for provision to be made for a subsequent increase to carer's allowance supplement for the period of 1 October 2021 to 31 March 2022.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

These temporary provisions were introduced to enhance the reporting of inspections and of deaths in care homes, primarily care homes for adults and older people. This is because evidence has shown that older people are more at risk of being seriously affected by coronavirus and more at risk of death as a consequence. Children's and young people's services have continued to be scrutinised and supported by the Care Inspectorate throughout the coronavirus pandemic, but have not fallen under the scope of these temporary provisions.

It is not anticipated that expiry of these provisions will have an adverse impact on children and young people, nor any particular subset of those children or young people.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has not identified any particular groups of children and young people who are more likely to be affected than others.

Provisions deemed essential to be extended beyond 30 September 2021 to continue responding appropriately to the public health emergency

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

Those children and young people who reside in a family home that is in receipt of benefits may be more positively impacted by an extension to the changes made. Such family homes could have been seen to be more at risk of falling into rent arrears and therefore eviction proceedings. The temporary changes provided for by these provisions, along with increased financial support on offer during the pandemic, are likely to positively impact on this particular group of children and young people.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

Children in impoverished households with debt are five times more likely to have low well-being than those in households without debt problems, according to a 2016 report by The Children's Society. In 2014, StepChange estimated 1.4m UK families, with 2.4m dependent children, were living in problem debt. Having a number of different creditors was found to significantly increase stress in impoverished households, as different creditors may have different demands and may all call for repayment at the same time. Distressing experiences, such as visits from bailiffs, fear of eviction and stress caused by arguing parents trying to make ends meet, were found to have a direct impact on children's mental well-being.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has not identified any particular groups who are more likely to be affected than others.

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case can't be heard in a criminal court. Instead their behaviour can

be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

The increase in the maximum fiscal fine that COPFS can offer as an alternative to prosecution may have a financial impact on children aged 16 to 17 who are offered and accept to pay a fine rather than being prosecuted in the courts.

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case can't be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

These provisions will impact children and young people only in instances where the person has been arrested for a criminal offence and held in police custody prior to an appearance in court. However, in accordance with section 22 of the Criminal Justice (Scotland) Act 2016, generally persons under 16 (and 16 and 17 year olds subject to compulsory supervision orders) are to be kept in a place of safety until the person can be brought before the court and this place of safety must not be a police station unless certain conditions are met.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

Children aged 16-17 who are more likely to be prosecuted in the adult criminal court system are more likely to be affected by these measures than younger children (though it should be noted that the impact of the extension of time limits is primarily administrative and intended to avoid the need for COPFS to apply for, and the courts to determine, applications to extend time limits on a case-by-case basis).

Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

The main impact of the provision is to enable witnesses who are unable to give evidence in person by virtue of a particular risk related to coronavirus and who cannot give evidence in any other way to have their statement admitted in evidence. The Scottish Government does not consider there is any particular group of children and young people who are more likely to be affected by this provision.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

Young people aged 16-17 subject to Community Payback Order (CPOs), and potentially the children of those serving CPOs may be affected by the policy. As noted, 16-17 year olds made up only 2% of individuals who received a CPO in the 2019/20 period.

The extension of the provision relating to timescales for completion of unpaid work or other activity has a neutral or limited positive benefit. It helps ensure individuals subject to these requirements have sufficient time to complete the requirement. This helps ensure individuals can comply with their order and complete in expected timescales.

The Scottish Government has also considered whether there would be any impact on the children of those serving CPOs and is confident that ensuring that unpaid work lasts for at least 12 months does not increase risk of harm to children or young people, as UPW has no risk management element.

Should the powers to vary CPOs in bulk be invoked in the future, consideration will be given as to how these proposals could impact on children or young people. A CRWIA was completed in respect of the [Community Orders \(Coronavirus\)\(Scotland\) Regulations 2021](#), which was made under these powers.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

Depending on the criteria set in the proposed regulations, the early release process could apply to any young person serving a custodial sentence, if they matched the key criteria for the process. (As noted above, this was applied to the May 2020 release process, and the one eligible individual was granted early release).

By the nature of the legislation, children and young people related to individuals who were to be released, or living in the household where an individual was domiciled after release, are possibly more likely to be affected than others. Potentially, children and young people who were victims of those individuals could also be affected. As discussed above, the criteria controlling which prisoners would be eligible for release included exclusions for particular types of prisoner that presented a heightened risk to others, and the assessment of each individual included the potential to veto the early release of any individual whose early release would have presented a risk to specific individual.

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government is aware that almost half those residing in student accommodation will be international students and so will benefit from the provisions. The Scottish Government estimates that almost half of students in halls are from outside the UK and hence, those staying in provider maintained and

private sector halls of residence, are potentially more likely to have a wider variety of ethnic backgrounds.

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Those children and young people who reside in a family home that is in receipt of benefits may be more positively impacted by an extension to the changes made. Such family homes could have been seen to be more at risk of falling into rent arrears and therefore eviction proceedings. The temporary changes provided for by these provisions, along with increased financial support on offer during the pandemic, are likely to positively impact on this particular group of children and young people.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has not identified any particular groups of children and young people who are more likely to be affected than others.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

These measures, in particular the increased in minimum debt threshold that can give rise to creditor petition bankruptcy through the courts, will benefit those children and young people living in households facing the burden of unsustainable debt. Children in impoverished households with debt are five times more likely to have low well-being than those in households without debt problems, according to a 2016 report by The Children's Society. In 2014, StepChange estimated 1.4m UK families, with 2.4m dependent children, were living in problem debt. Having a number of different creditors was found to significantly increase stress in impoverished households, as different creditors may have different demands and may all call for repayment at the same time. Distressing experiences, such as visits from bailiffs, fear of eviction and stress caused by arguing parents trying to make ends meet, were found to have a direct impact on children's mental well-being.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

This provision relates to those over 16 and who have a mental disorder. However this provision will ensure that patients still have the ability to choose their own named person, while minimising any delays in the process of nomination caused by the pandemic. This in turn will reduce any delays in having the patient involved in their care and treatment decisions.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)



The measures affect people prosecuted in the criminal courts. As such, children aged 16-17 are more likely to be prosecuted in the adult criminal court system are more likely to be affected by these measures than younger children.

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case can't be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

These provisions will impact children and young people only in instances where the person released on an undertaking is a person aged 12 years or more. It should be noted, however, Lord Advocate's Guidelines: Liberation by the Police Covid-19 or Coronavirus says while children can be released on undertakings, the necessity and proportionality of imposing conditions on a child must be considered carefully before applying any liberation condition to a child.

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

These provisions will not impact on particular groups of children and young people who are more likely to be affected than others.

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

This is a key measure to provide for the continuation of court business aspects of which would otherwise be unable to proceed during the coronavirus pandemic. It is not anticipated that there will be more of an impact on any particular groups of children and young people.

Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision enables the Care Inspectorate to issue notices by electronic means in as safe and secure a way as possible, as the expiry of these provisions would result in the requirement for physical processes to once again take effect. It is not anticipated that the extension of this provision will have an adverse impact on children and young people, nor any particular subset of those children or young people.

Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

The provisions would affect any children and young people who may require notarial services. Such number are anticipated to be low. Those in this age category are generally more familiar with technology. It is not anticipated that this will have a negative impact on children or young people, as the provisions simply allow for alternative means to access such services, and in doing so aim to reduce, anxiety, cost and delay for parties.

**4. Who else have you involved in your deliberations?**

Given the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, in order to protect all in society, including children and young people, it is important that some of the provisions in the Scottish Acts remain in force after 30 September 2021. Due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to consult extensively with all stakeholders on the Bill itself. However, section 15 of the Coronavirus (Scotland) Act 2020 and section 12 of the Coronavirus (Scotland)(No.2) Act 2020 require the Scottish Government to review and report on the operation of the provisions in Parts 1 of the Scottish Acts every two months. As part of that reporting process, the Scottish Government consults with relevant stakeholders on individual measures, where appropriate.

Therefore, while no formal consultation has taken place, the Scottish Government has built on the informal consultation carried out as part of the regular reporting process and has informally consulted, as appropriate, with stakeholders affected by the measures to be expired and extended by the Bill. The Scottish Government has consulted with the undernoted stakeholders.

Provisions to be expired on 30 September 2021, resulting in a return to pre-COVID legislative arrangements

Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has undertaken informal consultation with a range of stakeholders involved in debt and insolvency procedures. These stakeholders include representatives from the money and debt advice sector, creditor representatives, insolvency practitioners and other interested groups including the Law Society of Scotland.

Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

Scottish Government consulted with key and statutory partners via the weekly Children's Hearings Recovery, Group, Children's Hearings Improvement Partnership (CHIP) with where appropriate views sought from Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland(CHS), Children 1<sup>st</sup>, Clan Child law, Children and Young People's Commissioner Scotland, COSLA,

Social Work Scotland, Police (Scotland) and SOLAR. They all contributed to proposed provisions designed to allow essential flexibility in relation to the continuing operation of the children's hearing and related systems to ease the extra pressures of Covid-19 and to continue to ensure the protection of care of vulnerable children whilst recognising that there was a need to ensure that children's rights to request reviews remains accessible.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

An AWI Emergency Legislation Commencement Consideration Group was set up after the suspension of the provisions at the end of September 2020. This met every 4-5 weeks and consisted of representatives from Scottish Government, the Office of the Public Guardian, The Mental Welfare Commission, the Royal College of Psychiatrists, the Scottish Courts and Tribunals Service, the mental health officer group of Social Work Scotland, the Centre for Mental Health and Capacity Law at Edinburgh Napier University and the Law Society of Scotland. At the most recent meeting on 26 April the group unanimously agreed that the provisions should be expired in September 2021.

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

Given the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, and as a result of both the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to consult formally with stakeholders on the Bill itself. The Scottish Government has, however, worked very closely with Social Security Scotland to understand operational implications.

Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020)

Given the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, and as a result of both the pre-election period and the need to have this legislation in force by 30 September 2021, Scottish Government officials have not consulted in the expiry of the specific provisions relating to the seven day notice periods.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

Due to the urgency of the legislation, as previously discussed, no formal consultation was undertaken on the expiry of the CCAS payment provision. However, the Scottish Government is content that backdating of CCAS can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

Given the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, and as a result of both the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to consult formally with stakeholders on the Bill itself. However, the Care Inspectorate, as primary agency, have been consulted and are supportive of the expiry of these provisions.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government engages regularly with key stakeholders concerning the impact of the pandemic on marriage and civil partnership. The Government is also in regular contact with National Records of Scotland (NRS) who have been working closely with local authority registrars.

Provisions deemed essential to be extended beyond 30 September 2021 to continue responding appropriately to the public health emergency

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

Consultation during the pandemic has focussed on the Social Housing Resilience Group (SHRG) and Private Rented Sector Resilience Group (PRSRG), Members of the SHRG include landlord representatives from both the housing association and local authority sectors, the Scottish Housing Regulator and Public Health Scotland. The PRSRG includes tenant representative organisations, Public Health Scotland and local authority representatives.

The Scottish Government has sought informal views on the extension of the eviction from dwelling houses provisions from the stakeholders in both groups. In the social sector the Scottish Government has also sought informal views from tenant representatives of the Registered Tenant Organisation Regional Networks.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has undertaken informal consultation with a range of stakeholders involved in debt and insolvency procedures. These stakeholders include representatives from the money and debt advice sector, creditor representatives, insolvency practitioners and other interested groups including the Law Society of Scotland.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

The Scottish Government discusses the impact and relevance of these measures on a regular basis COFS, SCTS and Police Scotland; and with a range of

stakeholder involved in the Justice recovery programme has informally consulted with COPFS on this measure throughout the period of the coronavirus pandemic.

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has informally consulted with COPFS on this measure throughout the period of the coronavirus pandemic.

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has informally consulted with Police Scotland and SCTS on this measure throughout the period of the coronavirus pandemic.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has informally consulted with COPFS and SCTS on this measure throughout the period of the coronavirus pandemic.

Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has informally consulted with COPFS and SCTS on this measure throughout the period of the coronavirus pandemic.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has informally consulted with a number of stakeholders (including Social Work Scotland, the Scottish Courts and Tribunals Service, the Convention of Scottish Local Authorities, and Community Justice Scotland) on these provisions, as well as the regulations made under them, throughout the period of the coronavirus pandemic. This informal consultation on these specific provisions has been reported on as part of the statutory two-monthly reporting to Parliament and has informed decisions on the continued necessity and appropriateness of the measures. Recent informal discussions have informed the approach being taken on the extension of some provisions, and expiry of others. No specific issues in relation to children and young people have been raised.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has consulted in detail with the Scottish Prison Service on the potential further application of early release provisions. During the planning for the early release process in May 2020 detailed discussions were held with SPS, Social Work Scotland, COSLA, ALACHO, and representatives of NHS boards and Community Justice Partnerships. Victims groups were consulted on the planning of the early release process, and their views informed the regulations

developed of the process. Should it be prove necessary to utilise these provision in the future, further consultations would be held to develop the regulations.

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) which are being expired)

An informal consultation was undertaken with the Student Accommodation Group on extending the provisions of the Act. Responses indicated that this was reasonable although there was not a specific consultation on the expiry of the seven day notice period.

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Consultation during the pandemic has focussed on the Private Rented Sector Resilience Group. Members of the group includes tenant representative organisations, Public Health Scotland and local authority representatives.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has undertaken informal consultation with a range of stakeholders, including social care provider representative organisations and trade union representatives.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has undertaken informal consultation with a range of stakeholders involved in debt and insolvency procedures. These stakeholders include representatives from the money and debt advice sector, creditor representatives, insolvency practitioners and other interested groups including the Law Society of Scotland.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has engaged with relevant stakeholders, which include members of the Scottish Government's Short Life Mental Health Legislation Commencement Consideration Group, throughout the period of the coronavirus pandemic. The Short Life Mental Health Legislation Commencement Consideration Group consists of the MHTS, Social Work Scotland, Mental Welfare Commission, Scottish Courts and Tribunal Service and the Royal College of Psychiatrists who fully supported the need for this provision. The Scottish Government continues to engage with stakeholders in order to gather, analyse and review all available data and evidence concerning provisions relating to mental health.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has informally consulted with COPFS and SCTS on this measure throughout the period of the coronavirus pandemic.

Criminal Justice - Arrangements for the custody of persons detained at police stations (Section 3 and schedule 2: paragraphs 2 – 5 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has informally consulted with Police Scotland, COPFS, SCTS and the Scottish Prison Service on these measures throughout the period of the coronavirus pandemic.

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has informally consulted with COPFS on this measure throughout the period of the coronavirus pandemic.

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

For provisions related to the Proceeds of Crime Act 2002, the Scottish Government has discussed these issues with COPFS and SCTS. COPFS has identified them as priority issues and Scottish Government agrees with this assessment.

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government continues to informally consult with the Scottish Courts and Tribunals Service and the Scottish Society for Messengers-at-arms and Sheriff Officers on these measures. These provisions have been identified by those parties as a key measure to provide for the continued operation of courts and tribunals as a result of the coronavirus pandemic. The justice system is reliant upon these provisions to enable court business to progress, most often in relation to commissary and civil matters.

Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision enables the Care Inspectorate to issue notices by electronic means in as safe and secure a way as possible, as the expiry of these provisions would result in the requirement for physical processes to once again take effect. It is not anticipated that the extension of this provision will have an

adverse impact on children and young people. However, the Care Inspectorate has been consulted and are supportive of the extension of this provision.

Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

When considering the provisions there was no consultation with the specific interests of children and young people in mind as the Act applies to everyone equally. However, the Scottish Government consulted with the Law Society of Scotland and Faculty of Advocates, who take an interest in all, including children and young people, exercising their legal rights. No children and young-people related concerns were raised.

**5. Will this require a CRWIA?**

For the reasons outlined above, the Scottish Government considers that a CRWIA is required.

**CRWIA Declaration**

Tick relevant section, and complete the form.

**CRWIA required**

**CRWIA not required**

Please continue to Stage 2 on the next page

**Authorisation**

**Policy lead**  
Emma Lopinska

**Date**  
3 June 2021

**Deputy Director or equivalent**  
James Hynd

**Date**  
4 June 2021



**CRWIA Stage 2**  
**The CRWIA – key questions**

**1. Which UNCRC Articles are relevant to the policy/measure?**

**List all relevant Articles of the UNCRC and Optional Protocols.**

All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life, survival and development; and the child's right to have their views given due weight.

The following Articles of the UNCRC and Optional Protocols are relevant to the measures in the Bill:

**Article 1** of the UNCRC defines a child as every human being below the age of 18.

**Article 2 (Non-discrimination)** - Children should not be discriminated against in the enjoyment of their rights. No child should be discriminated against because of the situation or status of their parent/carer(s).

**Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

**Article 4 - Protection of rights** - Governments should undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of the available resources.

**Article 5 - Parental guidance and a child's evolving capacities** - Governments must respect the rights, responsibilities and duties of parents and carers, as well as members of the extended family, to direct and guide the child in the exercise of their rights.

**Article 9 - Separation from parents** - A child should not be separated from his or her parents against their will, unless such a separation is in their best interests. In any related proceedings, all interested parties shall be given an opportunity to participate and make their views known.

A child who is separated from one or both parents has the right to maintain direct and regular contact with both parents, unless this is contrary to the child's best interests.

**Article 12 - Respect for the views of the child** - Every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body.

**Article 13 - Freedom of expression** - Every child must be free to say what they think and to seek, receive and share information, as long as the information is not damaging to themselves or others.

**Article 15 - Freedom of association** - Every child has the right to freedom of assembly: to meet with other children, and to join groups and organisations, as long as it does not stop others from enjoying their rights.

**Article 18 - Parental responsibilities and state assistance** - Parents, or legal guardians, have the primary responsibility for the upbringing and development of

the child, and should always consider what is best for the child. Governments must provide appropriate assistance to parents and carers to help them.

**Article 26 - Social security** - Every child has a right to benefit from social security, taking into account the resources and circumstances of those who have responsibility for the child.

**Article 27 - Adequate standard of living** - Every child has a right to a standard of living adequate to their physical, mental and social development. Governments should take measures to assist parents and carers who cannot afford to provide this, and in particular to provide assistance and support with food, clothing and housing. Governments should take all appropriate measures to recover child maintenance from parents or others who have financial responsibility for the child.

## **2. What impact will the policy/measure will have on children's rights?**

Provisions to be expired on 30 September 2021, resulting in a return to pre-COVID legislative arrangements

Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

The expiry of this provision reintroduces the prohibition against benefitting from more than one moratorium on diligence in any 12 month period. The intention behind this amendment was to ensure that those who had recently had a moratorium prior to the on-set of the pandemic were not excluded from the effect of the changes and as this has been in force since 7 April 2020, the policy rationale no longer exists. However, the extended period of moratorium protection remains in force and this has a positive impact on children and young people of families living with problem debt.

The costs of problem debt are felt strongly by families. StepChange, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances. There are concerns that due to the circumstances surrounding the Covid-19 pandemic, there may be a number of additional families who might enter problem debt. This Bill will therefore extend the six month moratorium on debt relief to alleviate these additional pressures.

This provision complies with **Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

Reformed Regulation-making power to Amend functions of National Convener (CHS) and Principal Reporter (SCRA): reverting back to original legislation brings benefits to children who will have hearings dealt within much more stringent timescales.

The original provisions comply with **Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests.

Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

**Article 3 - Best interests of the child** (under 18) is similar to the AWI principle of benefit to the adult (over 16). Similarly the present and past wishes and feelings of the adult under AWI must be taken account of before any intervention is made.

The time periods for guardianships and s.47 certificates were extended by 'stopping the clock' in order to prevent people being without the protection of a guardianship order or s.47 certificate through inability to renew the order or certificate. Suspension of these provisions in September 2020 and subsequent expiry of them in September 2021 will ensure that these orders and certificates have been extended no longer than was necessary.

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

The expiry of these temporary provisions will result in a return to the original legislative arrangements in place prior to the coronavirus pandemic, such that redeterminations will be required to once again be made within the usual timescale. There is no detrimental impact on children's rights, and the expiry of these provisions is in compliance with the **Article 26 - right to social security** by ensuring children and young people's redeterminations will once again be made within the prescribed timescales in place prior to the outbreak of the coronavirus pandemic.

Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020)

The expiry of the seven day notice period will ensure that all student residential tenancies will have a notice period of 28 days. There is no detrimental impact on children's rights created by the expiry of these provisions.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

CCAS affected young people (16 and over) who are in receipt of Carer's Allowance ("CA") with an indirect impact on disabled children and young people who are cared for by someone in receipt of CA.

This provision complied with **Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

This provision complied with **Article 18 - Parental responsibilities and state assistance** - Parents, or legal guardians, have the primary responsibility for the upbringing and development of the child, and should always consider what is best for the child. Governments must provide appropriate assistance to parents and carers to help them.

This provision complied with **Article 26 - Social security** - Every child has a right to benefit from social security, taking into account the resources and circumstances of those who have responsibility for the child.

Beyond expiry of these provisions on 30 September 2021, the Scottish Government is content that backdating of CCAS can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force. Further legislation will be introduced to allow for provision to be made for a subsequent increase to carer's allowance supplement for the period of 1 October 2021 to 31 March 2022. Relevant impact assessments will accompany that legislation.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

These temporary provisions were introduced to enhance the reporting of inspections and of deaths in care homes, primarily care homes for adults and older people. This is because evidence has shown that older people are more at risk of being seriously affected by coronavirus and more at risk of death as a consequence. Children's and young people's services have continued to be scrutinised and supported by the Care Inspectorate throughout the coronavirus pandemic, but have not fallen under the scope of these temporary provisions.

It is not anticipated that expiry of these provisions will have an adverse impact on children and young people.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has not identified any impact on children's rights.

Provisions deemed essential to be extended beyond 30 September 2021 to continue responding appropriately to the public health emergency

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

There is a positive impact on many children and young people of families living in rented accommodation.

Tenants in both the private and social rented sectors are finding themselves in financial difficulty due to the pandemic and finding themselves unable to meet their obligations under their tenancy agreement. Under current housing legislation, this places them at risk of having their home repossessed by their landlord at a time when housing, health and other public services are under acute and ongoing pressure. More broadly, there is also a need to prevent the unnecessary movement of tenants during this unprecedented situation to support measures to inhibit the progress of the virus.

To protect tenants from being evicted from their homes during the pandemic, the amendment of the expiry date of the Scottish Acts will extend beyond 30 September 2021:

- the notice to leave period for private rented sector landlords and the notice for recovery of possession for social landlords that must apply. The extended notice periods are either for 6 months (in most cases) or 3 months for certain tenant conduct grounds relating to antisocial or criminal behaviour and where a landlord or their family member need to move into the property. No change will be made in relation to where eviction is sought on the ground that a property is vacant as it will have no impact on dealing with the current crisis. No change is also made in relation to the alternative accommodation ground which applies to assured tenancies, nor in relation to short secure tenancies at the end of their term involving anti-social behaviour;
- making all grounds for repossession discretionary so that the Tribunal, once operational again, can consider the full facts of the case when deciding whether to grant an eviction.

Over recent years the private rented sector has seen an increasing number of families calling it home. Based on the latest published Scottish Household Survey (SHS) data, there are an estimated 70,000 family households out of 340,000 in the private rented sector in Scotland. In the social rented sector there are 150,000 family households out of 580,000. 'Families' are assumed to include large family, small family and single parent household categories of the SHS.

SHS data also highlights that, 11% of social rented households were single parent families, 9% were small families and 5% were large families. These are broadly similar to that of the private rented sector. Many of these family households will be significantly impacted by the current Covid-19 crisis, therefore the provisions being taken forward to protect renters from eviction during this time are highly likely to

have a positive impact on both children and young people residing within these rented family homes.

Should these legislative measures not be taken forward, many families with children may face being evicted from their rented properties during the current health crisis and therefore significantly increase the chances of households becoming homeless. Therefore not taking forward this temporary legislative action is likely to have a detrimental impact on the children's and young people's rights.

The rented housing provisions comply with both **Article 3 'Best Interests of the Child'** and **Article 27 'Adequate Standard of Living'** by protecting children and young people from potential displacement or homelessness during the Covid-19 pandemic.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

Positive impact on children and young people of families living with problem debt. The costs of problem debt are felt strongly by families. StepChange, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances. There are concerns that due to the circumstances surrounding the Covid-19 pandemic, there may be a number of additional families who might enter problem debt. This Bill will therefore extend the six month moratorium on debt relief to alleviate these additional pressures.

This provision complies with **Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

No detrimental impact is anticipated on children's rights. These processes help reduce delay in court cases which will effect children's lives (many of which will be relevant to ECHR rights and UNCRC rights, including child protection cases and their impact on Art 9 – separation from parents), including Children's hearings cases as they allow cases to proceed where physical distancing requirements would make physical attendance impossible.

The measures adhere to the right to a fair hearing under Article 6 of the ECHR and also provide a process by which children can give their views in court cases/hearings, either via video link or if this is not deemed to be conducive to fair process/in the interests of justice then in person in a court (preserving and

upholding the court's obligation to respect the views of the child under Art 12 UNCRC).

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

No detrimental impact is anticipated upon children's rights.

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

No detrimental impact is anticipated upon children's rights.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

The backlog of cases in the court system which these measures relate to may result in children who are prosecuted for alleged criminal offences having to wait longer for their case to be heard. In a minority of cases where children under 18 are held on remand prior to trial, it could result in that person spending longer on remand than would have been the case prior to the pandemic (though it is not possible to say that this is a direct impact of the extension of time limits, as they can be extended on a case-by-case basis on cause shown.

Where a child is a victim of crime, these measures reduce the risk that no proceedings could be brought against the alleged perpetrator because proceedings become 'time barred'

Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

The provision does not have any detrimental impact on children's rights. By allowing the introduction of evidence by statement from witnesses who are unable to give evidence in person by virtue of a particular risk related to coronavirus and who cannot give evidence in any other way, it may help to prevent the postponement of criminal trials, which may be beneficial to child victims and witnesses.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

The extension of the provision relating to timescales for completion of unpaid work or other activity has a neutral or limited positive benefit. It helps ensure individuals subject to these requirements have sufficient time to complete the requirement. This helps ensure individuals can comply with their order and complete in expected timescales. The timescale is proportionate and helps ensure individuals, including young people, are not subject to orders longer than necessary while allowing a reasonable time to complete them in current circumstances.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

The early release process would not be expected to impact on children's rights. The detail of the legislation, and the regulations devised for any early release process, would provide an opportunity to address the rights of children, or other individuals, who might potentially be effected.

Legal Aid (Section 5 and schedule 4: paragraphs 21 – 23 of the Coronavirus (Scotland) Act 2020)

It is not anticipated that this will have a negative impact on children or young people.

Solicitors and advocates who deliver legal aid services may suffer financial detriment as a result of Covid 19, with a reduction in criminal trials, criminal activity and civil demands impacting on income. A slowdown in income could have a significant negative impact on the ability of legal aid providers to continue. The risk is that once the justice system returns to whatever a new normal is, there will be insufficient capacity in the legal profession to deliver legal aid services. This will directly impact on the criminal justice system with implications on an accused' right to a fair trial and legal counsel. In civil law a reduction in legal aid practitioners will impact on a person's ability to protect and defend their rights including areas of discrimination, housing and employment. It is expected there may be an increase in those seeking advice in these areas. The legal profession are supportive of these measures. It is not anticipated that this will have a negative impact on any person within the protected characteristics.

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) which are being expired)

The extension of a 28 day notice to leave period in relation to the forthcoming academic term, during the time the provisions are in force and for coronavirus-related reasons only will enhance student's rights. The measure will strengthen young people's rights.

This provision complies with **Article 1** of the UNCRC defines a child as every human being below the age of 18.

This provision complies with **Article 2 (Non-discrimination)** - Children should not be discriminated against in the enjoyment of their rights. No child should be discriminated against because of the situation or status of their parent/carer(s).

This provision complies with **Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing -



and that the institutions, services and facilities responsible for their care and protection conform with established standards.

This provision complies with **Article 4 - Protection of rights** - Governments should undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of the available resources.

This provision complies with **Article 9 - Separation from parents** - A child should not be separated from his or her parents against their will, unless such a separation is in their best interests. In any related proceedings, all interested parties shall be given an opportunity to participate and make their views known. A child who is separated from one or both parents has the right to maintain direct and regular contact with both parents, unless this is contrary to the child's best interests.

This provision complies with **Article 12 - Respect for the views of the child** - Every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body.

This provision complies with **Article 13 - Freedom of expression** - Every child must be free to say what they think and to seek, receive and share information, as long as the information is not damaging to themselves or others.

This provision complies with **Article 27 - Adequate standard of living** - Every child has a right to a standard of living adequate to their physical, mental and social development. Governments should take measures to assist parents and carers who cannot afford to provide this, and in particular to provide assistance and support with food, clothing and housing. Governments should take all appropriate measures to recover child maintenance from parents or others who have financial responsibility for the child.

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

There is a positive impact on many children and young people of families living in private rented accommodation.

Tenants in the private rented sector are finding themselves in financial difficulty due to the pandemic and unable to meet their obligations under their tenancy agreement. Under current housing legislation, this places them at risk of having their home repossessed by their landlord at a time when housing, health and other public services are under acute and ongoing pressure. More broadly, there is also a need to prevent the unnecessary movement of tenants during this unprecedented situation to support measures to inhibit the progress of the virus.

To protect tenants from being evicted from their homes during the pandemic, the amendment of the expiry date of the Scottish Acts will extend beyond 30 September 2021 the private landlord pre-action protocol requirements, which set out the steps a landlord should take to help resolve rent arrears before commencing eviction proceedings. This could involve agreeing a suitable repayment plan and signposting a tenant to financial support that is available to them. Failure by a private landlord to follow these pre-action requirements, could see a Tribunal reject any eviction application the landlord makes.

Over recent years the private rented sector has seen an increasing number of families calling it home. Based on the latest published Scottish Household Survey (SHS) data, there are an estimated 70,000 family households out of 340,000 in the private rented sector in Scotland. In the social rented sector there are 150,000 family households out of 580,000. 'Families' are assumed to include large family, small family and single parent household categories of the SHS.

Should these legislative measures not be extended, many families with children may face being evicted from their rented properties during the current health crisis and therefore significantly increase the chances of households becoming homeless. Therefore not taking forward this temporary legislative action is likely to have a detrimental impact on the children's and young people's rights.

The rented housing provisions comply with both **Article 3 - Best Interests of the Child** and **Article 27 - Adequate Standard of Living** by protecting children and young people from potential displacement or homelessness during the Covid-19 pandemic.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has not identified any impact on children's rights.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

The costs of problem debt are felt strongly by families. StepChange, a debt advice agency, suggest that 90% of parents in problem debt cut back on essential items for their children to help them keep up with their debts. They suggest that families in problem debt are twice as likely to argue about money than families in general, contributing to relationship strain and family breakdown. These problems are not limited to parents. Amongst children from families in problem debt, StepChange found that 60% often worried about their families' finances. There are concerns that due to the circumstances surrounding the coronavirus pandemic, there may be a number of additional families who might enter problem debt. These measures, in particular the increase in the minimum debt threshold that can give rise to creditor bankruptcy through the courts, will benefit those children and young people living in households facing the burden of unsustainable debt.

This provision complies with **Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests.

Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

This provision complies with **Article 18 - Parental responsibilities and state assistance** - Parents, or legal guardians, have the primary responsibility for the upbringing and development of the child, and should always consider what is best for the child. Governments must provide appropriate assistance to parents and carers to help them.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

This provision will ensure that patients over 16 who have a mental disorder still have the ability to choose their own named person, while minimising any delays in the process of nomination caused by the pandemic. This in turn will reduce any delays in having the patient involved in their care and treatment decisions.

This provision complies with This provision complies with **Article 3 - Best interests of the child** - Every decision and action taken relating to a child must be in their best interests. Governments must take all appropriate legislative and administrative measures to ensure that children have the protection and care necessary for their wellbeing - and that the institutions, services and facilities responsible for their care and protection conform with established standards.

This provision complies with **Article 4 - Protection of rights** - Governments should undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of the available resources.

This provision complies with **Article 12 - Respect for the views of the child** - Every child has a right to express their views and have them given due weight in accordance with their age and maturity. Children should be provided with the opportunity to be heard, either directly or through a representative or appropriate body.

This provision complies with **Article 13 - Freedom of expression** - Every child must be free to say what they think and to seek, receive and share information, as long as the information is not damaging to themselves or others.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

The provision is principally intended to avoid the need for multiple court hearings to adjourn a case on more than one occasion where it is not possible to obtain information from e.g. Criminal Justice Social Work or Police Scotland because the response to the coronavirus pandemic has impacted their ability to respond to

such requests. As such, it is not considered that it has a direct impact on children's rights.

Criminal Justice - Arrangements for the custody of persons detained at police stations (Section 3 and schedule 2: paragraphs 2 – 5 of the Coronavirus (Scotland) (No.2) Act 2020)

No detrimental impact is anticipated upon children's rights.

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

No detrimental impact is anticipated upon children's rights.

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of the specified period for payment of a confiscation order where payment cannot be made for reasons relating, directly or indirectly, to coronavirus within 12 months of the date that the order was made and disapplication of interest where an extension is granted may have an impact upon the rights of children and young people under **Article 9 of UNCRC - Separation from parents** - A child should not be separated from his or her parents against their will, unless such a separation is in their best interests. In any related proceedings, all interested parties shall be given an opportunity to participate and make their views known. A child who is separated from one or both parents has the right to maintain direct and regular contact with both parents, unless this is contrary to the child's best interests.

Where a court has granted a confiscation order, it can extend the time required to pay the order to six months from the date the order is made, and in exceptional circumstance to a maximum of 12 months. The Proceeds of Crime Act does not permit any extension beyond 12 months.

By providing for the court to extend the 12 month permitted period for reasons connected to coronavirus, the accused has longer to fulfil the confiscation order and therefore avoid receiving a default custodial sentence for non-payment that would separate them from their children.

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision permits documents which would otherwise have been displayed on the walls of the court to instead be displayed on the Scottish Courts and Tribunal Service thereby enabling the documents to be viewed by the public during a time when people are unable to physically access the walls of court. This is a key measure to provide for the continuation of civil and commissary business, aspects of which would otherwise be unable to proceed during the coronavirus

pandemic. It is not anticipated that the extension of this provision will have an adverse impact on children and young people.

Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision enables the Care Inspectorate to issue notices by electronic means in as safe and secure a way as possible, as the expiry of these provisions would result in the requirement for physical processes to once again take effect. It is not anticipated that the extension of this provision will have an adverse impact on children and young people.

Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated that this will have a negative impact on children or young people.

### **Summary**

The Justice-related measures comply with Articles 39 and 40. **Article 39 - Recovery and rehabilitation of child victims** - Children who have been the victim of any form of exploitation should receive the help they need to recover their health, dignity and self-respect, and reintegrate into society. **Article 40 - Juvenile justice** - Governments must establish a minimum age of criminal responsibility. Wherever appropriate and desirable, measures for dealing with children without resorting to judicial proceedings should be used (providing that human rights are fully respected). A child accused or convicted of breaking the law must be treated with dignity and respect, in a manner which takes into account the aim of promoting the child's reintegration into society. They have the right to legal assistance and a fair trial that takes account of their age or situation. Governments must ensure that the child's privacy is fully respected at all times.

The Scottish Government considers the impacts of the Bill are justified and a proportionate means of achieving the legitimate aim of supporting various aspects of the ongoing response to the public health emergency caused by the coronavirus pandemic

The Scottish Acts contained measures which were required to respond to an emergency situation. The Acts contained a number of safeguards. These included: the relevant provisions in the Acts automatically expired less than six months after they came into force, although this could be extended by the Scottish Parliament for two further periods of six months; where a provision was no longer considered necessary, Scottish Ministers may bring it to an end earlier; Scottish Ministers are required to report on the continued need for the measures, and on the use of powers in the Scottish Acts, every two months.

These safeguards will continue to be in place for the duration of the extension period, with the expiry dates of Parts 1 of the Scottish Acts being extended by this Bill for a six month period to 31 March 2022, with the Scottish Parliament given the power to

extend the Acts for a further period of six months to 30 September 2022. Any such regulations would be made only if deemed necessary at that time. The Bill contains no provision to extend the Acts beyond 30 September 2022.

A number of provisions are expired in this Bill which, following engagement with stakeholders, are no longer deemed necessary to have in place beyond 30 September 2021. The Scottish Government remains committed to keeping the provisions of the Scottish Acts, as extended by this Bill, under review at all times, under the now established review scheme.

### **3. Will there be different impacts on different groups of children and young people?**

#### Provisions to be expired on 30 September 2021, resulting in a return to pre-COVID legislative arrangements

#### Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

The expiry of this provision reintroduces the prohibition against benefitting from more than one moratorium on diligence in any 12 month period. The intention behind this amendment was to ensure that those who had recently had a moratorium prior to the on-set of the pandemic were not excluded from the effect of the changes and as this has been in force since 7 April 2020, the policy rationale no longer exists. However, the extended period of moratorium protection remains in force and this has a positive impact. For debt relief, children in impoverished households with debt are five times more likely to have low well-being than those in households without debt problems, according to a 2016 report by The Children's Society. In 2014, StepChange estimated 1.4m UK families, with 2.4m dependent children, were living in problem debt. Having a number of different creditors was found to significantly increase stress in impoverished households, as different creditors may have different demands and may all call for repayment at the same time. Distressing experiences, such as visits from bailiffs, fear of eviction and stress caused by arguing parents trying to make ends meet, were found to have a direct impact on children's mental well-being.

#### Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

Reverting back to the original legislation will still require the FACTS and tier structure for lockdown to be followed. All children who are participating in a children's hearing or pre-hearing panel will be affected by these ongoing protections and changes, including those from secure or residential care, in foster or kinship care and child protection matters. These children and young people are the most vulnerable in Scotland and it is important the supports around them are able to deliver what is in the best interest of the child in these unprecedented times and also ensure their legal orders remain in place for their protection. While younger people might be less likely to become severely ill through COVID-19, they can just as easily spread the virus to others. They may have no, or very mild,

symptoms and not realise they are infectious. In addition, disadvantaged children and families are over-represented in formal care and justice systems. The physical size and quality of their homes may make it more difficult for family members to self-isolate if they fall ill. Low-income jobs more often can't be done remotely, and maintaining food and other essentials could be a major financial hurdle, leading to multiplied risk to young people's health and wellbeing. Lacking resources to prepare and protect against the COVID-19, poorer families face a higher risk of contracting—and subsequently spreading—the virus.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

By the nature of the AWI legislation the particular group of young people affected will be those with learning disabilities, although due to the narrow age range of 16-18 year olds it is not expected that there will be many where this is applicable to the AWI Act.

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

It is not anticipated that expiry of these provisions will have an adverse impact on the children and young people who apply to Social Security Scotland for assistance.

Student residential tenancy: termination by tenant (Schedule 1: paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii), and paragraph 3(3) and (4) of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated that expiry of these provisions will have different impacts on different groups of children and young people.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated that expiry of these provisions will have different impacts on different groups of children and young people.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

These temporary provisions were introduced to enhance the reporting of inspections and of deaths in care homes, primarily care homes for adults and older people. This is because evidence has shown that older people are more at risk of being seriously affected by coronavirus and more at risk of death as a consequence. Children's and young people's services have continued to be scrutinised and supported by the Care Inspectorate throughout the coronavirus pandemic, but have not fallen under the scope of these temporary provisions.

It is not anticipated that expiry of these provisions will have an adverse impact on children and young people, nor any particular subset of those children or young people.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has not identified any different impacts on different groups of children and young people.

Provisions deemed essential to be extended beyond 30 September 2021 to continue responding appropriately to the public health emergency

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

These provisions positively impact on all children and young people who currently live in rented housing by extending the notice periods for eviction during the current Covid-19 pandemic. However, it is expected that those children and young people who reside in a family home that is in receipt of benefits may be more positively impacted by the changes being made. Such family homes could have been seen to be more at risk of falling into rent arrears and therefore eviction proceedings. The changes provided for by these provisions are likely to positively impact on this particular group of children and young people.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

For debt relief, children in impoverished households with debt are five times more likely to have low well-being than those in households without debt problems, according to a 2016 report by The Children's Society. In 2014, StepChange estimated 1.4m UK families, with 2.4m dependent children, were living in problem debt. Having a number of different creditors was found to significantly increase stress in impoverished households, as different creditors may have different demands and may all call for repayment at the same time. Distressing experiences, such as visits from bailiffs, fear of eviction and stress caused by arguing parents trying to make ends meet, were found to have a direct impact on children's mental well-being.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

The Scottish Government does not consider this provision is likely to have different impacts on different groups of young people.

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal



prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case can't be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case can't be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

As noted above, 16-17 year old children are more likely to be prosecuted in court than younger children.

Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

The Scottish Government does not consider this provision is likely to have different impacts on different groups of children and young people.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

Young people aged 16-17 in the criminal justice system, those subject to Community Payback Order (CPOs), and potentially the children of those serving CPOs may be affected by the policy. There are no specific impacts on groups within this.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

The early release process would not have different impacts on specific groups of children and young people. There is the possibility that individual individuals/households would be affected differently, but that would depend on their specific circumstances, rather than the operation of the process.

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020, except paragraph 3(2)(b)(i), the opening words of paragraph 3(2)(b)(ii) and paragraph 3(3) and (4) which are being expired)

This measure focusses on students, not all of whom will be young people although there are young people under 18 at college and university.

These measures would (i) ensure that students who have left their accommodation, or have been unable to return to it, due to Coronavirus restrictions and who wish to end their contract early, are able to do so; and (ii) give students looking to find suitable accommodation for the next academic term reassurance that should restrictions continue and they are unable to take up the accommodation, that they will not be forced to pay for accommodation they are not using for a full academic year, during the time the provisions are in force.

This latter provision will continue to align student's tenancy rights in Purpose Built Student Accommodation (PBSA) in relation to notice periods with those students residing in the mainstream private rented sector.

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

These provisions positively impact on all children and young people who currently live in private rented housing by setting out the steps a private landlord should be taking to support tenants who have fallen into rent arrears during the current Covid-19 pandemic.

However, it is expected that those children and young people who reside in a family home that is in receipt of benefits may be more positively impacted by the changes being made. Such family homes could have been seen to be more at risk of falling into rent arrears and therefore eviction proceedings. The changes provided for by these provisions are likely to positively impact on this particular group of children and young people.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

This provision is expected to have a positive impact on young people, for example where an eligible parent receives financial support. It is not expected to have a different impact on different groups of young people however.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

These measures, in particular the increase in the minimum debt threshold that can give rise to creditor bankruptcy through the courts, will benefit those children and young people living in households facing the burden of unsustainable debt.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

These measures are expected to have a positive impact on patients over 16 and who have a mental disorder by ensuring that they still have the ability to choose their own named person, while minimising any delays in the process of nomination caused by the pandemic. This in turn will reduce any delays in having the patient involved in their care and treatment decisions.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

The measures affect people prosecuted in the criminal courts. As such, children aged 16-17 are more likely to be prosecuted in the adult criminal court system are more likely to be affected by these measures than younger children

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

The age of criminal responsibility in Scotland is 8 years old. This means a child aged 8 or older can be arrested or charged with a crime. The age of criminal prosecution is 12 years old. This means if a child aged between 8 and 11 breaks the law, their case can't be heard in a criminal court. Instead their behaviour can be addressed by a Children's Hearing. Children aged 12 to 16 can be taken to court but only for serious crimes. Most offences committed by children of this age will be dealt with by early intervention (like a warning or help from a support organisation) or the children's hearings system. Individuals ages from 16 to 17 who commit a criminal offence may be dealt with by the courts.

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of the specified period for payment of a confiscation order where payment cannot be made for reasons relating, directly or indirectly, to coronavirus within 12 months of the date that the order was made and disapplication of interest where an extension is granted may have a positive impact on the rights of children and young people under Article 9 of UNCRC, however this will not impact differently on different groups of children and young people.

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision permits documents which would otherwise have been displayed on the walls of the court to instead be displayed on the Scottish Courts and Tribunal Service thereby enabling the documents to be viewed by the public during a time when people are unable to physically access the walls of court. This is a key measure to provide for the continuation of civil and commissary business, aspects of which would otherwise be unable to proceed during the coronavirus pandemic. It is not anticipated that the extension of this provision will impact differently on different groups of children and young people.

Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision enables the Care Inspectorate to issue notices by electronic means in as safe and secure a way as possible, as the expiry of these provisions would result in the requirement for physical processes to once again take effect. It is not anticipated that the extension of this provision will have an adverse impact on children and young people, nor any particular subset of those children or young people.

Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

It is not anticipated this will impact differently on different groups of children and young people, as the provisions simply allow for alternative means to access such services.

**4. If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?**

Children's rights and wellbeing are a priority for the Scottish Government. No negative impacts have been identified.

**5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?**

- Safe - Protected from abuse, neglect and harm by others at home, at school and in the community.
  - The provisions for children's hearings/panels will ensure children and young people are protected from abuse, neglect and harm by others at home, at school and in the community.
  - Justice provisions will ensure that children and young people who are victims of crime will continue to have access to justice.
- Healthy - Having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices.
  - The measure in relation to PBSA and University and College Accommodation will contribute to bringing children and young people's rights into alignment which will enhance their mental wellbeing and enable them to make safe choices.
  - By ensuring young people have time to complete unpaid work other activity requirements, this may prevent risk of anxiety that a requirement of court cannot be completed in time.
  - The temporary removal of the requirement for a prescribed person to witness a named person agree to the role under mental health legislation is expected to have a positive impact on patients over 16

who have a mental disorder by reducing any delays in having the patient involved in their care and treatment decisions.

- Achieving - Being supported and guided in their learning and in the development of their skills, confidence and self-esteem at home, at school and in the community
- Nurtured - Having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting.
  - The provisions in relation to preventing evictions in rented housing during the Covid-19 pandemic will ensure children and young people continue to have a nurturing place to live, in a family setting and not face the uncertainty of having to move home or even homelessness.
  - The provisions for children's hearings/panels will ensure children and young people have a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting.
  - Extending the moratorium on debt relief will help families maintain a nurturing family setting for children.
  - In relation to PBSA and University and College Accommodation measures, the tenancy rights underpinning those safe places to live will be the same for all young people who are studying and living away from home.
  - There are strong links between unsustainable debt and mental health. It is also clear that many of those in extreme debt face difficulties about providing basic necessities for their children. As such, the measures on bankruptcy make a small contribution towards ensuring all children can have a nurturing place to live.
- Active - Having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community
- Respected - Having the opportunity, along with carers, to be heard and involved in decisions which affect them
- Responsible - Having opportunities and encouragement to play active and responsible roles in their schools and communities and, where necessary, having appropriate guidance and supervision and being involved in decisions that affect them
- Included - Having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn.
  - Extending the moratorium on debt relief will help families facing economic uncertainty for a limited time period.
  - Making documents available on the SCTS website allows court business, most often in relation to commissary matters, to progress. This will allow families to deal with a deceased person's estate as quickly as possible thus helping to alleviate any financial burden.

- The provisions in relation to preventing evictions in rented housing during the Covid-19 pandemic will ensure children and young people continue to feel included and being a part of the community in which they currently live.
- The measure in relation to PBSA and University and College Accommodation will contribute to bringing rights into alignment, enabling them to feel that they are an accepted part of the community in which they live and learn.

**6. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?**

The expiry and extension of provision in the Scottish Acts contribute to the Scottish Ministers' duty to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements under the Children and Young People (Scotland) Act 2014.

As described above, consideration of each of the measures to be expired or extended in the Scottish Acts and their compliance with the UNCRC has been undertaken. So, for example, children and young people in PBSA and university and college accommodation will have the same rights as their peers.

**7. What evidence have you used to inform your assessment? What does it tell you?**

Provisions to be expired on 30 September 2021, resulting in a return to pre-COVID legislative arrangements

Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

For provisions related to debt relief, the unprecedented circumstances presented by the COVID-19 pandemic and the need to react quickly to protect all in society including children and young people has made it impossible to consult extensively with stakeholders. The Scottish Government has, however, engaged with professionals and those organisations directly affected by the legislation including money and debt advice organisations, creditor representatives, insolvency professionals and organisations including the Law Society of Scotland. These discussions have centred on whether the protections introduced are considered proportionate and strike the right balance between the interests of creditors and those facing issues with problem debt. The Scottish Government will continue to engage with stakeholders to mitigate any unforeseen possible negative effects.

Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

For provisions related to the children's hearing and related systems, Scottish Government has continued to consult with key and statutory partners via the weekly Children's Hearings Recovery, Group, Children's Hearings Improvement Partnership (CHIP) with where appropriate views sought from Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland (CHS), Children 1<sup>st</sup>,

Clan Child law, Children and Young People's Commissioner Scotland, COSLA, Social Work Scotland, Police (Scotland) and SOLAR. They all contributed to Coronavirus (Scotland) Act 2020 provisions designed to allow essential flexibility in relation to the continuing operation of the children's hearing and related systems to ease the extra pressures of Covid-19 and to continue to ensure the protection of care of vulnerable children.

The Scottish Government verified with the responsible bodies and officers that within their various responsibilities and current powers they have acted to minimise the number and range of emergency statutory changes.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

The Adults with Incapacity Emergency Legislation Commencement Consideration Group considered on an ongoing basis what evidence could be ingathered to inform decision making. The participants fed back views from their organisations and considered what statistical information was available in order to inform the decision to expire the provisions.

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

Social Security Scotland's review of the operation of the provisions to date indicates that these extensions provided some benefit to clients, in helping them access their rights despite the impact of coronavirus.

The Scottish Government concluded that there remained value to Social Security Scotland and to clients in having extensions in place until 31 September 2021 as a contingency against further disruption to services and clients' circumstances. However, given the strategic approach to outbreak management that is in place, the conclusion has been reached that there is insufficient justification for extending these provisions beyond September 2021. The Interpretation and Legislative Reform (Scotland) Act 2010 provides a basis for the provisions to continue to have effect for re-determinations commenced ahead of the provisions being expired.

There has always been a need to balance the benefits of the provisions in tackling disruption caused by coronavirus against the risk that people's right to challenge, including a timely redetermination response by Social Security Scotland, might be undermined by delays to redeterminations being allowed under the provisions. This risk was mitigated by provisions requiring Social Security Scotland to still undertake a redetermination as soon as possible. However, where previously the balance favoured accepting the risk of allowing the extension when weighed against the benefits to clients and the agency, the strategic approach to outbreak management based on five graduated levels of restrictions, which is providing for the easing of restrictions, means the balance now favours expiring these provisions on 31 September 2021.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government is content that backdating can continue beyond expiry of the provision on the basis that the Interpretation and Legislative Reform (Scotland) Act 2010 will protect individual rights acquired while the provision was in force. The Government does not consider any saving or transitional provisions are therefore required in connection with expiry.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

These temporary provisions were introduced and to enhance the reporting of inspections and of deaths in care homes, primarily care homes for adults and older people. Children's and young people's services have continued to be scrutinised and supported by the Care Inspectorate throughout the coronavirus pandemic, but have not fallen under the scope of these temporary provision.

It is not anticipated that expiry of these provisions will have an adverse impact on children and young people.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

In considering the expiry of the provision, the Scottish Government considered that the right of men and women of marriageable age to marry is already protected by Article 12. The views of key stakeholders concerning the impact of the pandemic on marriage and civil partnership have been taken into account.

Provisions deemed essential to be extended beyond 30 September 2021 to continue responding appropriately to the public health emergency

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

These provisions impact on all children and young people who currently live in rented housing by extending the notice periods for eviction during the current Covid-19 pandemic, although it is expected that those children and young people who reside in a family home that is in receipt of benefits may be more positively impacted by the changes made.

The number of households claiming either Housing Benefit or the Housing element of Universal Credit in Scotland who are renting and who have dependent children has increased by 14% over the pandemic period, from around 132,400 in February 2020 to 151,000 in November 2020<sup>4</sup>. This increase has been proportionately larger for the private rented sector, in which the number of claimant households with children has increased by 21% from 36,600 to 44,400, compared to the social rented sector which has seen an increase of 11% from 95,800 to 106,600.

Although in terms of wider context it should be noted that the increase in claimants

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<sup>4</sup> Figures are based on published DWP Stat-Xplore figures as at 19 May 2021, which show that the number of UC households with Housing Entitlement with children has increased from 72,018 in February 2020 to 101,463 in November 2020, with a corresponding change over this period in the number of Housing Benefit claimants in the rented sector with children from 60,390 to 49,579.



in the private rented sector has been higher for households without children, in which the number of claimant households without children has increased by 50% from 51,100 to 76,600.

Recent findings from the Scottish Government Public Attitudes to Coronavirus polling work in March 2021 show that people continue to be concerned about the impacts of Covid on employment and paying bills. Of the respondents who are working or furloughed and who have dependent children in the households, 20% think that Covid poses either a high threat or a very high threat to their job, and 12% are either very concerned or extremely concerned that they won't be able to pay their bills<sup>5</sup>.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

For provisions related to debt relief, the unprecedented circumstances presented by the COVID-19 pandemic and the need to react quickly to protect all in society including children and young people has made it impossible to consult extensively with stakeholders. The Scottish Government has, however, engaged with professionals and those organisations directly affected by the legislation including money and debt advice organisations, creditor representatives, insolvency professionals and organisations including the Law Society of Scotland. These discussions have centred on whether the protections introduced are considered proportionate and strike the right balance between the interests of creditors and those facing issues with problem debt. The Government will continue to engage with stakeholders to mitigate any unforeseen possible negative effects.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

The Scottish Government regularly discusses and consults SCTS, COPFS and Police Scotland on these measures throughout the period of the coronavirus pandemic. This forms the basis of the statutory two-monthly reporting to Parliament and has informed decisions on the continued necessity and appropriateness of these measures.

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has informally consulted with COPFS on this measure throughout the period of the coronavirus pandemic. This informal consultation on these specific provisions has been reported on as part of the statutory two-monthly reporting to Parliament and has informed decisions on the continued necessity and appropriateness of this measure.

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

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<sup>5</sup> [Scottish Government Public attitudes to coronavirus: weekly tracker - data tables for 17-18 March 2020](#)

The Scottish Government has informally consulted with SCTS and Police Scotland on this measure throughout the period of the coronavirus pandemic. This informal consultation on these specific provisions has been reported on as part of the statutory two-monthly reporting to Parliament and has informed decisions on the continued necessity and appropriateness of this measure.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

The Inspectorate for Prosecution's thematic report on the prosecution of young people<sup>6</sup> and the Children and Young People in Custody in Scotland: Looking Behind the Data<sup>7</sup> show that in 2015/16, 2,203 children and young people were prosecuted in Scotland's courts. With regards those detained in custody, a snapshot taken in April 2017 found that there were 47 children under the age of 18 detained in custody, of whom 18 were being held on remand. Assuming that this snapshot is typical of the broader picture, it indicates that the use of remand for children being prosecuted in court is low, but that a small number of children are held on remand prior to trial.

Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has continuously engaged with COPFS and SCTS on an informal basis to monitor the practical operation of the provisions. No issues relating to children and young people have been raised during this process.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

Evidence from Social Work Scotland and justice social work services, as well as advice justice partners and analysts has informed position taken on which provisions should be extended. There was no specific evidence in relation to children and young people, though risks of the justice system being overwhelmed have potential implications for all individuals.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

As noted above, the Scottish Government has liaised regularly with the Scottish Prison Service to assess the current circumstances within the prison system. During the planning for the early release process in May 2020 detailed discussions were held with SPS, Social Work Scotland, COSLA, Association of Local Authority Chief Housing Officers (ALACHO), representatives of NHS boards and Community Justice Partnerships, and Victims groups, to input to the development of the specific regulations applied.

<sup>6</sup> [Prosecution of young people: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prosecution-young-people-report/pages/1-10.aspx)

<sup>7</sup> [Youth Justice Improvement Board: Looking behind the data](https://www.youthjusticeboard.org.uk/looking-behind-the-data/)

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020)

The Fourth Report to Parliament<sup>8</sup> published in December 2020 reported that in the period May to mid-November 2020 over 6,500 notices to leave have been lodged with providers. Over two thirds of respondents advised this was much higher than the previous year. The Scottish Government continues to engage with stakeholders through the Student Accommodation Group and will take forward with them a wider review of Purpose Built Student Accommodation.

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

These provisions impact on all children and young people who currently live in privately rented housing by setting out the steps a private landlord should take to support a tenant who has fall into rent arrears during the current Covid-19 pandemic, although it is expected that those children and young people who reside in a family home that is in receipt of benefits may be more positively impacted by the changes made.

The number of households claiming either Housing Benefit or the Housing element of Universal Credit in Scotland who are renting and who have dependent children has increased by 14% over the pandemic period, from around 132,400 in February 2020 to 151,000 in November 2020<sup>9</sup>. This increase has been proportionately larger for the private rented sector, in which the number of claimant households with children has increased by 21% from 36,600 to 44,400, compared to the social rented sector which has seen an increase of 11% from 95,800 to 106,600. Although in terms of wider context it should be noted that the increase in claimants in the private rented sector has been higher for households without children, in which the number of claimant households without children has increased by 50% from 51,100 to 76,600.

Recent findings from the Scottish Government Public Attitudes to Coronavirus polling work in March 2021 show that people continue to be concerned about the impacts of Covid on employment and paying bills. Of the respondents who are working or furloughed and who have dependent children in the households, 20% think that Covid poses either a high threat or a very high threat to their job, and 12% are either very concerned or extremely concerned that they won't be able to pay their bills<sup>10</sup>.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

<sup>8</sup> [Coronavirus Acts: fourth report to Scottish Parliament - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/fourth-report-to-parliament/pages/introduction.aspx)

<sup>9</sup> Figures are based on published DWP Stat-Xplore figures as at 19 May 2021, which show that the number of UC households with Housing Entitlement with children has increased from 72,018 in February 2020 to 101,463 in November 2020, with a corresponding change over this period in the number of Housing Benefit claimants in the rented sector with children from 60,390 to 49,579.

<sup>10</sup> [Scottish Government Public attitudes to coronavirus: weekly tracker - data tables for 17-18 March 2020](https://www.gov.scot/publications/scottish-government-public-attitudes-to-coronavirus-weekly-tracker-data-tables-for-17-18-march-2020/pages/introduction.aspx)

The Scottish Government has undertaken informal consultation with stakeholders including local authorities, social care provider representative organisations and trade unions. Extending these powers allows us to continue to support infection prevention and control in social care settings, and to prevent financial hardship for social care workers.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

For provisions related to debt relief, the unprecedented circumstances presented by the COVID-19 pandemic and the need to react quickly to protect all in society including children and young people has made it impossible to consult extensively with stakeholders. The Scottish Government has, however, engaged with professionals and those organisations directly affected by the legislation including money and debt advice organisations, creditor representatives, insolvency professionals and organisations including the Law Society of Scotland. These discussions have centred on whether the protections introduced are considered proportionate and strike the right balance between the interests of creditors and those facing issues with problem debt. The Government will continue to engage with stakeholders to mitigate any unforeseen possible negative effects.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has engaged with relevant stakeholders, which include members of the Scottish Government's Short Life Mental Health Legislation Commencement Consideration Group, throughout the period of the coronavirus pandemic. The Short Life Mental Health Legislation Commencement Consideration Group consists of the Mental Health Tribunal (MHTS), Social Work Scotland, Mental Welfare Commission, Scottish Courts and Tribunal Service and the Royal College of Psychiatrists who fully supported the need for this provision. The Scottish Government continues to engage with stakeholders in order to gather, analyse and review all available data and evidence concerning provisions relating to mental health.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

On-going consultation with COPFS and SCTS on these provisions indicates they continue to be important in managing court business during the coronavirus pandemic.

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has informally consulted with COPFS on this measure throughout the period of the coronavirus pandemic. This informal consultation on these specific provisions has been reported on as part of the statutory two-monthly

reporting to Parliament and has informed decisions on the continued necessity and appropriateness of this measure.

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government's on-going consultation with COPFS on these provisions indicates that whilst COPFS has gained experience in handling the impact of the virus over the last year, there remains a significant backlog of confiscation cases to progress through the court system. Similarly, a large number of firms that COPFS deal with for 2002 Act casework have experienced difficulties ranging from staff on furlough, difficulties obtaining information from financial institutions as well as, and as a consequence of, obtaining accountancy reports. Due to the delays in these processes there has been a consequent delay in COPFS being able to review and settle matters.

In relation to the amendment to section 99(4) of the Act, COPFS has advised that there are around 35 cases where the permitted period may expire by the end of September 2021, with around a further 30 cases between then and the end of March 2022 when the permitted period could expire. There is a concern that, given delays to court proceedings and investigations caused by the coronavirus pandemic, that the "permitted period" of two years may expire before the necessary work in relation to a confiscation order can be completed.

In terms of amendments to sections 116 and 117, information from COPFS indicates that there are 55 cases where the time to pay may expire by the end of September 2021 and a further 5 cases between then and the end of March 2022 where the time to pay could expire. COPFS has indicated that other emergency provisions can have an impact on the progress of confiscation order proceedings. This includes instances where some individuals subject to confiscation orders are hindered from selling property to help fulfil a confiscation order as a consequence of other legislative protections for tenants being brought in as a result of the coronavirus pandemic.

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

Whilst there is no specific evidence in relation to children and young people, indicative data from manual records kept by court staff show that the provisions have been utilised to progress a substantive volume of cases/applications, predominantly in relation to commissary business and provides compelling evidence of their importance and continued relevance.

SCTS Website Intimations*					
Type of Action	No. of Intimations Jun - 30 Sep 2020	No. of Intimations 1 Oct 2020 - 1 Nov 2020	No. of Intimations 1 Nov 2020 - 31 Dec 2020	No. of Intimations 1 Jan 2021 - 28 Feb 2021	No. of Intimations 1 Mar 2021 - 31 Mar 2021
Application for Sheriff Officer Commission	44	2	4	13	0
Charge for Payment	36	197	507	628	435
Company Insolvency	49	15	35	12	10
Ordinary Cause	69	29	61	81	17
Petition for Appointment of Executor	1,238	513	588	613	405
Sequestration/Recall of Sequestration	3	9	1	1	0
Simplified Divorce	15	7	5	5	9
Summary Applications	19	6	6	12	5
Summary Cause	4	2	6	88*	26
Other	50	46	70	56	16
Total	1,398	636	1,283	1509	923
<i>*As it is not possible to electronically capture the number of intimations, court staff kept manual records. The information has not been quality assured and as such, should be used with caution</i>					

**Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)**

Extension of this provision enables the Care Inspectorate to issue notices by electronic means in as safe and secure a way as possible, as the expiry of these provisions would result in the requirement for physical processes to once again take effect. It is not anticipated that the extension of this provision will have an adverse impact on children and young people. Notices will be capable of being issued electronically to any care service, irrespective of the age of its users.

**Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)**

The unprecedented circumstances presented by the COVID-19 pandemic and the need to react quickly to protect all in society including children and young people has made it difficult to consult extensively with stakeholders. The Scottish Government has however engaged with those organisations directly affected by this provision, and will continue to do so to mitigate any unforeseen possible negative effects.

## **8. Have you consulted with relevant stakeholders?**

Given the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, in order to protect all in society, including children and young people, it is important that some of the provisions in the Scottish Acts remain in force after 30 September 2021. Due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to undertake formal consultation on the Bill itself. However, section 15 of the Coronavirus (Scotland) Act 2020 and section 12 of the Coronavirus (Scotland)(No.2) Act 2020 require the Scottish Government to review and report on the operation of the provisions in Parts 1 of the Scottish Acts every two months. As part of that reporting process, the Scottish Government consults with relevant stakeholders on individual measures, where appropriate.

Therefore, while no formal consultation or evidence gathering has been possible, the Scottish Government has built on the informal consultation carried out as part of the regular reporting process and has informally consulted, as appropriate, with stakeholders affected by the measures to be expired and extended by the Bill.

### Provisions to be expired on 30 September 2021, resulting in a return to the pre-COVID legislative arrangements

#### Temporary extension of moratoriums on diligence (multiple applications) (Section 3 and schedule 2: paragraphs 2 and 3 of the Coronavirus (Scotland) Act 2020)

For provisions related to debt relief, the unprecedented circumstances presented by the COVID-19 pandemic and the need to react quickly to protect all in society including children and young people has made it impossible to consult extensively with stakeholders. The Scottish Government has, however, engaged with professionals and those organisations directly affected by the legislation including money and debt advice organisations, creditor representatives, insolvency professionals and organisations including the Law Society of Scotland. These discussions have centred on whether the protections introduced are considered proportionate and strike the right balance between the interests of creditors and those facing issues with problem debt. The Government will continue to engage with stakeholders to mitigate any unforeseen possible negative effects.

#### Children and vulnerable adults: children's hearings (Section 4 and schedule 3: paragraphs 1 to 5 and 7 to 10 of the Coronavirus (Scotland) Act 2020)

For provisions related to the children's hearing and related systems, the Scottish Government has continued to consult with key and statutory partners via the weekly Children's Hearings Recovery, Group, Children's Hearings Improvement Partnership (CHIP) with where appropriate views sought from Scottish Children's Reporter Administration (SCRA), Children's Hearings Scotland (CHS), Children 1<sup>st</sup>, Clan Child law, Children and Young People's Commissioner Scotland, COSLA, Social Work Scotland, Police (Scotland) and SOLAR. They all contributed to Coronavirus (Scotland) Act 2020 provisions designed to allow essential flexibility in relation to the continuing operation of the children's hearing and related systems to ease the extra pressures of Covid-19 and to continue to ensure the protection of

care of vulnerable children. whilst recognising that there was a need to ensure that children's rights to request reviews remains accessible.

Vulnerable adults: cases of adults with incapacity (Section 4 and schedule 3 paragraphs 11 of the Coronavirus (Scotland) Act 2020)

A link to the participants and the minutes of the Adults with Incapacity Emergency legislation consideration Commencement Group can be found here: [Adults with Incapacity Emergency Legislation Commencement Consideration Group](#)

Social Security (Section 8 and schedule 7 paragraph 1(b) and 5 of the Coronavirus (Scotland) Act 2020)

Given the continuing need to respond to the coronavirus pandemic and the exceptionally tight timescales involved with the Bill, it was not possible to consult formally with stakeholders.

The Scottish Government has, however, worked very closely with Social Security Scotland to understand operational implications and the impact on clients. Social Security Scotland's review of the operation of the provisions to date indicates that these extensions provided some benefit to clients, in helping them access their rights despite the impact of coronavirus. They have also helped to avoid appeals by allowing more time to make the re-determination.

Social Security Scotland have advised that the already very limited use of the provisions has further reduced over time, reflecting the steady reduction in disruption caused by Coronavirus across society. No impacts have been identified on children or young people and the Scottish Government does not therefore consider there is a need to consult with stakeholders over the expiry of the provisions.

Coronavirus Carer's Allowance Supplement (Section 2 and schedule 1 paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

This provision was introduced to ensure a Coronavirus Carer's Allowance Supplement payment was made to unpaid carers in receipt of Carer's Allowance in Scotland. This measure was supported by carer organisations. Payment was made successfully to over 80,000 unpaid carers at the end of June 2020. Around 83,000 carers are expected to benefit once all backdated payments are made.

The Scottish Government continues to informally consult with carer organisations in relation to the Coronavirus Carer's Allowance Supplement through the Carer Benefits Advisory Group.

Care Homes - Further provisions (Section 2 and schedule 1 paragraphs 22 and 23 of the Coronavirus (Scotland) (No.2) Act 2020)

These temporary provisions were introduced and to enhance the reporting of inspections and of deaths in care homes, primarily care homes for adults and older people. Children's and young people's services have continued to be scrutinised



and supported by the Care Inspectorate throughout the coronavirus pandemic, but have not fallen under the scope of these temporary provision.

It is not anticipated that expiry of these provisions will have an adverse impact on children and young people.

Marriage and Civil Partnership (Section 2 and schedule 1 paragraph 24 of the Coronavirus (Scotland) (No.2) Act 2020)

Specific consultation on the expiry of the provision was considered unnecessary given that expiry will not affect either the existence of the ECHR protection or the Scottish Government's policy to ensure the continued availability of marriage and civil partnership. As above, the Scottish Government engages regularly with key stakeholders, concerning the impact of the pandemic on marriage and civil partnership.

Provisions deemed essential to be extended beyond 30 September 2021 to continue responding appropriately to the public health emergency

Eviction from dwelling-houses (Section 2 and schedule 1: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

The continuing need to respond to the COVID-19 pandemic and the need to react quickly to protect all in society, including children and young people, mean that extensive, formal consultation with stakeholders on the Bill itself has not been possible. The Scottish Government has, however, informally engaged with members of the Social Housing and Private Sector Resilience Groups.

Temporary extension of moratoriums on diligence (Section 3 and schedule 2: paragraphs 1 and 4 of the Coronavirus (Scotland) Act 2020)

As already noted, the continuing need to respond to the COVID-19 pandemic and the need to react quickly to protect all in society, including children and young people, has made it impossible to consult extensively with stakeholders on the Bill itself. The Scottish Government has, however, engaged with professionals and those organisations directly affected by the legislation including money and debt advice organisations, creditor representatives, insolvency professionals and organisations including the Law Society of Scotland. These discussions have centred on whether the protections introduced are considered proportionate and strike the right balance between the interests of creditors and those facing issues with problem debt. The Government will continue to engage with stakeholders to mitigate any unforeseen possible negative effects.

Courts and tribunals: conduct of business by electronic means (Section 5 and schedule 4: paragraphs 1-6 of the Coronavirus (Scotland) Act 2020)

Discussions around the continuation of Court business is routinely discussed at the Justice Board and at the independent Advisory Group which was established to support the work of COVID19 recovery and renewal across the justice system. It's membership of third sector organisations provide regular feedback and a

mechanism for consultation on human rights issues, equalities and overall impact on system users.

Fiscal fines (Section 5 and schedule 4: paragraph 7 of the Coronavirus (Scotland) Act 2020)

While no formal consultation or evidence gathering has been possible, the Scottish Government has built on the informal consultation carried out as part of the regular reporting process and has informally consulted, as appropriate, with stakeholders affected by the measures to be expired and extended by the Bill, including the Crown Office and Procurator Fiscal Service

Cases beginning with an appearance from custody (Section 5 and schedule 4: paragraphs 8 and 9 of the Coronavirus (Scotland) Act 2020)

While no formal consultation or evidence gathering has been possible, the Scottish Government has built on the informal consultation carried out as part of the regular reporting process and has informally consulted, as appropriate, with stakeholders affected by the measures to be expired and extended by the Bill, including the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service.

Extension of time limits (Section 5 and schedule 4: paragraph 10 of the Coronavirus (Scotland) Act 2020)

The Scottish Government has informally consulted with COPFS and SCTS on this measure throughout the period of the coronavirus pandemic. Children's rights stakeholders have not raised concerns about the operation of these provisions.

Evidence (Section 5 and schedule 4: paragraph 11 of the Coronavirus (Scotland) Act 2020)

While no formal consultation or evidence gathering has been possible, the Scottish Government has built on the informal consultation carried out as part of the regular reporting process and has informally consulted, as appropriate, with stakeholders affected by the measures to be expired and extended by the Bill, including the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service.

Community orders (Section 5 and schedule 4: paragraphs 13, 15 and 16 of the Coronavirus (Scotland) Act 2020)

As noted, the Scottish Government has informally consulted with a number of stakeholders (including Social Work Scotland, the Scottish Courts and Tribunals Service, the Convention of Scottish Local Authorities, and Community Justice Scotland) on these provisions, as well as the regulations made under them, throughout the period of the coronavirus pandemic. This informal consultation on these specific provisions has been reported on as part of the statutory two-monthly reporting to Parliament and has informed decisions on the continued necessity and appropriateness of the measures. Recent informal discussions have informed the

approach being taken on the extension of some provisions, and expiry of others. No specific issues in relation to children and young people have been raised.

Release of prisoners (Section 5 and schedule 4: paragraphs 19 and 20 of the Coronavirus (Scotland) Act 2020)

As already noted, the Scottish Government has consulted regularly with the Scottish Prison Service on the potential further application of early release provisions. During the planning for the early release process in May 2020 detailed discussions were held with SPS, Social Work Scotland, COSLA, ALACHO, representatives of NHS boards and Community Justice Partnerships, and Victims groups. Should it be prove necessary to utilise these provision in the future, further consultations would be held to develop the appropriate regulations.

Student residential tenancy: termination by tenant (Section 2 and schedule 1: paragraphs 1 – 3 of the Coronavirus (Scotland) (No.2) Act 2020)

For provisions related to proposed changes to Student Tenancy Agreements in PBSA, Scottish Government officials have regularly engaged with the Student Accommodation Group

Tenancies: pre-action requirements for order for possession or eviction order on ground of rent arrears (Section 2 and schedule 1: paragraphs 4 and 5 of the Coronavirus (Scotland) (No.2) Act 2020)

The continuing need to respond to the COVID-19 pandemic and the need to react quickly to protect all in society, including children and young people, mean that extensive, formal consultation with stakeholders on the Bill itself has not been possible. The Scottish Government has, however, informally engaged with members of the Private Sector Resilience Group.

Social care staff support fund (Section 2 and schedule 1: paragraph 7 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has undertaken informal consultation with stakeholders including local authorities, social care provider representative organisations and trade unions. This feedback has been reflected in bi-monthly reporting to Parliament on the use of the powers.

Bankruptcy (Section 2 and schedule 1: paragraphs 8, 10 and 12 of the Coronavirus (Scotland) (No.2) Act 2020)

For provisions related to debt relief, the continuing need to respond to the COVID-19 pandemic and the need to react quickly to protect all in society, including children and young people, has meant extensive formal consultation with stakeholders on the Bill itself has not been possible. The Scottish Government has, however, engaged with professionals and those organisations directly affected by the legislation including money and debt advice organisations, creditor representatives, insolvency professionals and organisations including the Law Society of Scotland. These discussions have centred on whether the protections

introduced are considered proportionate and strike the right balance between the interests of creditors and those facing issues with problem debt. The Government will continue to engage with stakeholders to mitigate any unforeseen possible negative effects.

Mental Health: named person nomination (Section 2 and schedule 1: paragraph 15 of the Coronavirus (Scotland) (No.2) Act 2020)

The Scottish Government has engaged with relevant stakeholders, which include members of the Scottish Government's Short Life Mental Health Legislation Commencement Consideration Group, throughout the period of the coronavirus pandemic. The Short Life Mental Health Legislation Commencement Consideration Group consists of the MHTS, Social Work Scotland, Mental Welfare Commission, Scottish Courts and Tribunal Service and the Royal College of Psychiatrists.

Criminal Justice - Criminal proceedings: extension of time limits (Section 3 and schedule 2: paragraph 1 of the Coronavirus (Scotland) (No.2) Act 2020)

These provisions remove the time limit on the permitted length of a single adjournment in summary cases after first calling where the accused is not in custody, and in all cases to allow inquiries to be made prior to sentencing for a report on the offender's physical or mental condition or pending a decision regarding an alleged breach of a court order. The purpose of these provisions is to avoid additional court hearings in order to further adjourn cases where it is anticipated at the outset that the coronavirus pandemic means it will not be possible for further inquiries to be completed within the current maximum period for a single adjournment. These changes apply in cases involving children who have reached the minimum age for prosecution (12) in the same way as they do to adults, but it should be noted that, in line with the Lord Advocate's guidelines on the reporting of offences committed by children, the great majority of offences alleged to have been committed by children under the age of 16 are reported to the Children's Reporter rather than being prosecuted in the criminal courts.

Criminal Justice - Expiry of undertaking under section 25(2)(a) of the Criminal Justice (Scotland) Act 2016 (Section 3 and schedule 2: paragraph 6 of the Coronavirus (Scotland) (No.2) Act 2020)

While no formal consultation or evidence gathering has been possible, the Scottish Government has built on the informal consultation carried out as part of the regular reporting process and has informally consulted, as appropriate, with stakeholders affected by the measures to be expired and extended by the Bill, including the Crown Office and Procurator Fiscal Service.

Proceeds of Crime (Section 3 and schedule 2: paragraphs 8 and 9 of the Coronavirus (Scotland) (No.2) Act 2020)

For provisions related to the Proceeds of Crime Act 2002, the Scottish Government has discussed these issues with COPFS and SCTS. COPFS has

identified them as priority issues and Scottish Government agrees with this assessment

Intimation etc. of documents (Section 3 and schedule 2: paragraph 10 of the Coronavirus (Scotland) (No.2) Act 2020)

When considering the provisions there was no consultation with the specific interests of children and young people in mind as the Act applies to everyone equally. However, the Scottish Government has consulted with the Scottish Courts and Tribunals Service and the Scottish Society for Messengers-at-arms and Sheriff Officers. These provisions have been identified by those parties as a key measure to allow court business, most often in relation to commissary and civil matters, to progress. No children and young-people related concerns were raised.

Care services: giving of notices by the Care Inspectorate (Section 5 and schedule 4: paragraph 5 of the Coronavirus (Scotland) (No.2) Act 2020)

Extension of this provision enables the Care Inspectorate to issue notices by electronic means in as safe and secure a way as possible, as the expiry of these provisions would result in the requirement for physical processes to once again take effect. However, the Care Inspectorate, who have responsibilities covering all ages, including as Corporate Parents, have been consulted and are supportive of this provision being extended. It is not anticipated that the extension of this provision will have an adverse impact on children and young people.

Execution of documents, etc. (Section 5 and schedule 4: paragraph 9 of the Coronavirus (Scotland) (No.2) Act 2020)

When considering the provisions there was no consultation with the specific interests of children and young people in mind as the Act applies to everyone equally. However, the Scottish Government consulted with the Law Society of Scotland and Faculty of Advocates, who take an interest in all, including children and young people, exercising their legal rights. No children and young-people related concerns were raised.

**9. Have you involved children and young people in the development of the policy/measure?**

Given the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, in order to protect all in society, including children and young people, it is important that some of the provisions in the Scottish Acts remain in force after 30 September 2021. Due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to consult with children and young people on the Bill itself. As indicated above, however, the Scottish Government has engaged with relevant stakeholders affected directly by the measures in the Scottish Acts as part of the regular reporting process established by those Acts and will continue to work with them for the period of the pandemic, including getting input from children and young people to mitigate any possible unforeseen negative effects.

Specifically in relation to the measures on the extension of Student Tenancy Agreements in PBSA and University and College Accommodation, NUS Scotland and Emily Test – who, as organisations, are informed by the voices of students and young people have been consulted and helped shaped the measure.

### Child Rights and Wellbeing Impact Assessment

**Policy/measure**

**A general description of the policy/measure**

COVID-19 is first and foremost a public health crisis, and the measures to combat it have been necessary to save lives. The restrictions put in place using powers under the Coronavirus Act 2020 that have been in place since March 2020<sup>11</sup> have been extensive but necessary in order to limit transmission of the virus as far as possible. Public health measures needed to control and limit the spread of the virus continue to require a significant adjustment to the lives of those living in Scotland, to business in Scotland, and to the way public services are delivered and regulated.

After taking firm action to stop the spread of the virus by implementing a nationwide lockdown, the Scottish Government published Coronavirus (COVID-19): Framework for Decision Making<sup>12</sup> in April 2020, setting out the principles and approach for responding to the epidemic based around managing four key harms: direct health impacts of COVID-19; non-COVID-19 health harms; societal impacts; and economic impacts. These harms are deeply inter-related: health harms impact on society and the economy, just as the societal and economic effects impact on physical and mental health and wellbeing.

The Scottish Government published COVID-19: Scotland's Strategic Framework in October 2020.<sup>13</sup> A strategic approach to outbreak management based on graduated levels of protection was introduced in Scotland on 2 November 2020, with five packages of measures to apply different degrees of downward pressure on the Reproduction Rate (R) of the virus, according to different epidemiological conditions in the areas in which they are applied. The levels were designed to be applied locally, regionally or nationally, depending on the course of the pandemic.

<sup>11</sup> [Coronavirus Act 2020 - Schedule 19 - Health Protection Regulations: Scotland](#)

<sup>12</sup> [Coronavirus \(COVID-19\): framework for decision making - gov.scot \(www.gov.scot\)](#)

<sup>13</sup> [Coronavirus \(COVID-19\): Scotland's Strategic Framework - gov.scot \(webarchive.org.uk\)](#)

An update to COVID-19: Scotland’s Strategic Framework was published in February 2021,<sup>14</sup> in which the Scottish Government re-confirmed its strategic intent to “suppress the virus to the lowest possible level and keep it there, while we strive to return to a more normal life for as many people as possible.” It described six key tools for achieving this:

- The quickest practical roll-out of vaccinations, in line with advice from the Joint Committee on Vaccination and Immunisation (JCVI);
- The most effective use of testing and contact tracing;
- Applying proportionate protective measures (rules and guidance) to suppress transmission of the virus;
- Effective measures to manage the risk of importation of the virus;
- Supporting individuals, businesses and organisations to adhere to protective measures; and
- Providing care and support to mitigate the harms of the crisis.

The emergence of the Variants of Concern B.1.1.7 and B.1.617.2 have increased the transmissibility of the virus, making it more challenging to effectively suppress. This is one reason why public health measures continue to be required.

Current public health guidance<sup>15</sup> continues to mean that businesses and public authorities operate very differently to the way they have done previously. In addition, revised Protection Levels were published in April 2021<sup>16</sup> which set out updated packages of measures in the levels-based approach, taking into account the higher transmissibility of the B.1617.2 variant and the impact of the progress made in the vaccination roll-out. The Health Protection (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 21) Regulations 2021<sup>17</sup> implement the approach. All restrictions will be kept under review in the event of new developments, such as the emergence of a new variant of concern, to ensure that they remain proportionate and necessary to support the ongoing public health response.

The Scottish Government continues to place great importance in responding to the coronavirus epidemic, and protecting the

<sup>14</sup> [Coronavirus \(COVID-19\): Strategic Framework update - February 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-strategic-framework/pages/10-14.aspx)

<sup>15</sup> [Coronavirus \(COVID-19\): guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance/pages/1-10.aspx)

<sup>16</sup> [Coronavirus \(COVID-19\) protection levels: what you can do - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-protection-levels/pages/1-10.aspx)

<sup>17</sup> [The Health Protection \(Coronavirus\) \(Restrictions and Requirements\) \(Local Levels\) \(Scotland\) Amendment \(No. 21\) Regulations 2021](https://www.gov.scot/publications/health-protection-restrictions-requirements-local-levels-scotland-amendment-no-21-regulations-2021/pages/1-10.aspx)

	<p>health of people living in Scotland, including children and young people.</p> <p>The purpose of the Bill, therefore, is to update a range of existing legislative measures which support various aspects of the ongoing response to the public health emergency caused by COVID-19. The Bill amends the Coronavirus (Scotland) Act 2020, passed by the Scottish Parliament on 1 April 2020 and the Coronavirus (Scotland) (No.2) Act passed by the Scottish Parliament on 20 May 2020 (“the Scottish Acts”).</p> <p>The Scottish Acts contain provisions which make temporary adjustments to respond to the pandemic, and protect the health of people living in Scotland. Those provisions were subject to an expiry date, which was extended by regulations , but which cannot be extended beyond 30 September 2021. This Bill amends the expiry dates in Parts 1 of the Scottish Acts. At the same time the Bill also expires a number of provisions which are no longer considered necessary. The effect of this is to extend only those provisions which the Scottish Government considers remain essential in order for public services to be able to continue to discharge their functions in the way they were intended to. Many of the provisions contained in the two Scottish Acts have already been expired in line with the Government’s commitment to remove provisions that are no longer required to respond to the public health emergency.</p>
<p><b>Project initiation document</b></p> <p><b>Add link to the document</b></p>	<p>-</p>
<p><b>Initiating department</b></p> <p><b>The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility</b></p>	<p>Constitution and External Affairs – Constitution and Cabinet Directorate</p>
<p><b>Policy aims</b></p> <p><b>What the policy or measure is trying to achieve;</b></p>	<p>As noted above, a number of provisions in the Scottish Acts are expired in this Bill which, following engagement with stakeholders, are no longer deemed necessary to have in place beyond 30 September 2021. The Bill also has the effect of ensuring provisions in the Scottish Acts deemed</p>



**what are the expected outcomes**

necessary beyond 30 September 2021 continue to be available.

Specifically in relation to child rights and wellbeing the Bill will make provision to expire provision which:

- Provides for a Coronavirus Carer's Supplement Allowance
- Remove the prohibition against benefitting from more than one moratorium on diligence in any 12 month period;
- Relate to children's hearings, child protection and looked after children;
- Relate to cases of adults with incapacity;
- Make provision in relation to community orders in connection with drug treatment and testing orders;
- Relax the timescales which apply for Social Security Scotland making re-determinations.

Specifically in relation to child rights and wellbeing the Bill will make provision which will result in the extension of provision which:

- Gives students (as there are young people under 18 at college and university) in purpose-built student accommodation (PBSA), and university and college accommodation a 28 day notice to leave period in relation to the forthcoming academic term, during the time the provisions are in force and for Covid-19 related reasons only;
- Makes bankruptcy more accessible to debtors and less accessible to creditors;
- Temporarily removes the requirement for a prescribed person to witness a named person agree to the role under mental health legislation;
- Extends the specified period for payment of a confiscation order where payment cannot be made for reasons relating to coronavirus within 12 months of the date that the order was made and disapplication of interest where an extension is granted;
- Extends the notice to leave period for private rented sector landlords and the notice for recovery of possession for social landlords and make all grounds for repossession discretionary in the private rented sector;
- Enables Scottish Ministers to release specific groups of prisoners early, where this is necessary and proportionate, to support the safe operation of prisons, and protect the health of prison staff and prisoners.

<p><b>Timetable</b></p> <p><b>What is the time frame for a policy announcement/consultation/implementation</b></p>	<p>Given the need to continue to respond to the public health emergency, there is no alternative to a Bill which the Government proposes to progress under the emergency procedure. Where appropriate, consideration has been given to alternative approaches to primary legislation. Details of this are set out in the Policy Memorandum which accompanies the Bill. The Bill will be introduced to Parliament on 17 June. It is expected to complete Stage 3 on 24 June 2021.</p> <p>As a result of the continuing need to respond to the epidemic, in light of the ongoing public health measures which remain in place, in order to protect all in society, including children and young people, it is important that some of the provisions in the Scottish Acts remain in force after 30 September 2021. Due to the pre-election period and the need to have this legislation in force by 30 September 2021, it has not been possible to consult formally with stakeholders. However, as noted above, the Scottish Government has informally consulted with public bodies and other key stakeholders affected by the measures to be extended or expired by the Bill.</p> <p>Coronavirus continues to pose a significant threat to public health in Scotland. The Scottish Government is committed to taking all steps necessary to address that threat. The Scottish Acts contain provisions which make temporary adjustments to respond to the pandemic, and protect the health of people living in Scotland, including children and young people. This Bill makes necessary updates to those Acts.</p> <p>The Scottish Acts contained measures which were required to respond to an emergency situation. The Acts contained a number of safeguards. These included: the relevant provisions in the Acts automatically expired less than six months after they came into force, although this could be extended by the Scottish Parliament for two further periods of six months; where a provision was no longer considered necessary, Scottish Ministers may bring it to an end earlier; Scottish Ministers are required to report on the continued need for the measures, and on the use of powers in the Scottish Acts, every two months.</p> <p>These safeguards will continue to be in place for the duration of the extension period, with the expiry dates of Parts 1 of the Scottish Acts being extended by this Bill for a six month period to 31 March 2022, with the Scottish Parliament given the power to extend the Acts for a further period of six months to 30 September 2022. Any such regulations would be made only if deemed necessary at that time. The Bill contains no provision to extend the Acts beyond 30 September 2022.</p>
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	<p>A number of provisions are expired in this Bill which, following engagement with stakeholders, are no longer deemed necessary to have in place beyond 30 September 2021. The Scottish Government remains committed to keeping the provisions of the Scottish Acts, as extended by this Bill, under review at all times, under the now established review scheme.</p> <p>The Scottish Government is satisfied that all of the measures contained in the Bill are appropriate and proportionate.</p>
<b>Date</b>	4 June 2021
<b>Signature</b>	James Hynd



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