

- THE SCOTTISH WOMEN'S CONVENTION -

POLICY BRIEFING

Coronavirus (Scotland)

Act 2020



Coronavirus (Scotland) Act: Background

The Coronavirus (Scotland) Act introduced new powers and measures surrounding the ongoing Coronavirus (COVID-19) outbreak. The legislation is designed to compliment the emergency Coronavirus Act, 2020, passed by Westminster at the end of March.

The Act is the fastest piece of legislation to ever have made it's way through the Scottish Parliament, being passed in one day due to the ongoing escalation of the COVID-19 crisis. The Bill was introduced on the 31st of March and passed all three stages the following day to become law.

The Act includes:

- Provisions amending the law to protect tenants in rented accommodation within both the private and socially rented sector.
- Temporary amendments to Scotland's justice system, including the way trials are carried out during this time.
- Extensions on time limits regarding a range of protective and supervision orders for both children and vulnerable adults.

Housing and Eviction

The Act makes a number of provisions that amend a number of pieces of existing legislation including The Private Housing (Tenancies) (Scotland) Act as well as the Rent (Scotland) Act 1984. Key parts of this include:

- Increasing the minimum notice period for tenants from eviction for **up to 6 months** in the majority of cases. The exact length of notice a landlord must give a tenant will depend on the particular grounds of repossession. Where rent arrears tends to be the sole reason for eviction this will be increased to 6 months.
- The minimum notice period for reasons such as where tenants have used antisocial or criminal behaviour or where a landlord or their family member need to move into the property will be **3 months**.
- The current notice period for eviction will **remain at 28 days** after the notice is served for tenants who are not living in the property.
- Within the social housing sector, where there are a small number of cases where Short Scottish Secure Tenancies are coming to an end and where a landlord wishes to end a tenancy, the notice period will **remain at 2 months**.
- Private rented sector eviction cases going before the First-Tier Housing Tribunal are to be considered on a discretionary basis with the Tribunal to consider the reasonableness of eviction orders.
- Eviction notice periods are for notices issued **after** the commencement of the Act. Notices served before this will still come under previous legislation.

Temporary Extensions of Moratoriums for Debt

The Act makes certain provisions in regards to those that find themselves in debt during the Covid-19 pandemic in order to give people “breathing space” in which to work out repayment plans. It is also an attempt to alleviate some of the additional stress which may be accrued due to the financial difficulties of the current climate. This includes:

- Extending the normal period of moratorium for debt from **6 weeks to 6 months**.
- Removing the limitation that only one period of moratorium can be applied for in a 12 month period.

Children and Vulnerable Adults

The Coronavirus (Scotland) Act 2020 makes a range of temporary provisions. These include the extension of time limits for a range of child and vulnerable adult protection measures as well as the duties imposed on Local Authorities and relevant persons by these.

Children:

- Children's hearings and pre-hearings may consist of less than 3 members of a Children's Panel where this is not practical. It also discontinues the requirement to have both male and female panel members at hearings.
- Those taking part in such hearings may do so by video conferencing or other means rather than a physical presence. The Bill also makes provisions for the extension of maximum time limits for the arrangement of children's hearings in a number of different situations.
- Extends the period for Child Assessment Orders to assess a child's health **from 24 to 48 hours** after the Order is granted. It also extends the actual assessment period from **3 to 5 days**.
- Compulsory Supervision Orders which authorise certain measures in relation to a child are automatically **extended by 6 months** where they have not already been continued, unless the individual turns 18. Any new interim Compulsory Supervision Orders are extended from **22 to 44 days**.
- The removal of the upper limit for additional children to be looked after by foster carers where required and the extension of the time period by which a child can be looked after, in an emergency, by a kinship carer or a foster carer.
- Allows for the extension of the maximum period a child can be kept in secure accommodation without the authority of a Children's Hearing from **72 to 96 hours in any period of 28 consecutive days**.

Adults with Incapacity:

- Allows a stop on any time limited guardianship orders which were due to expire while this legislation is in force.
- Where a Section 47 Certificate, allowing for the authorisation of treatment for incapacitated adults, is in place and due to expire, the Act stops the expiration. *This does not stop any other reason for the certificate to cease to have effect.*
- Removes the requirement to take account of the views of the adult with incapacity and of any other interested parties. It will also allow a Local Authority to take steps when moving the adult out of a hospital where there is a welfare attorney, guardian or appropriate intervention order.

Justice

Before passage, The Bill as introduced made provision to allow for judge only trials in the most serious of cases. However, the Justice Secretary has announced that the Government will instead bring a separate Bill in regards to this after consultation with relevant parties. It will be brought forth at the end of April, 2020. The Act as passed in it's present format contains a number of powers relating to Scottish Justice procedures including:

- Power to design a programme of release for certain prisoners if needed. If the Scottish Government decides to take this measure, it will be subject to secondary legislation and Parliamentary approval. This would not include those serving life imprisonment or for those serving sentences for sexual crimes.
- Allowing for the suspension of requirements that a person physically attends a court or tribunal. However, a Court has discretion to not use this where it prejudices the fairness of proceedings or is contrary to the interests of justice.
- This legislation does not apply to criminal trials, however, a Court may apply this if it so wishes.
- Where this does occur, the person must attend by electronic means in accordance with any direction issued by the Court or tribunal and a failure to do so is seen as a failure to physically attend. This must be done in a way which still prevent persons from seeing witnesses, where the court has directed this, as they would in a physical court.
- Increases levels of maximum fixed penalty fines to be used as an alternative to prosecution during the outbreak.
- Allows for extensions to time limits where an accused person is remanded in custody facing trial or the maximum wait period where they are not in custody.
- Allow for increasing the availability of interim payments to support solicitors to deliver services under legal aid.

Functioning of Public Bodies

In order to mitigate the impact that Covid-19 will have for the delivery of public services, the Act introduces a range of extended timescales for a number of other duties not previously mentioned here. This includes:

- Extending the deadline for Freedom of Information responses from 20 to 60 working days plus putting in place the same extensions for a review of the request (i.e. making a possible 120 days for response in a maximum turnaround time).
- Allowing a public body to not respond, if it has reasonable cause, within the relevant timescales.

- Extensions to deadlines and automatic renewal for planning and Local Authority licencing as well as extensions on time limits for the completion of Community Orders by 12 months.
- Giving public bodies discretion in respect of reporting on specific duties in terms of timescales during the outbreak. However, this must be reported as soon as is practical afterwards.
- Allowing Local Authorities power to exclude the general public from meetings on health grounds whilst removing the need to provide hard copies of meetings unless it is reasonably practicable.
- Allowing licensing authorities to extend and alter timescales and deadlines for Licencing Boards in regards to premises selling alcohol under Schedule 5: Alcohol Licencing.

Expiry

The measures outlined within the Act are fundamentally emergency legislation intended to mitigate the impact on a range of services and persons during this crisis. It is key to have an end date by which such powers will expire in order to ensure that human rights are not infringed upon and that relevant safeguards and duties can be put back in place. The Scottish Government has stressed that the powers within this Act are in order to have some form of continuation during the Covid-19 crisis and are only to be used where absolutely necessary.

In accordance with this, the Act specifies:

- The majority of measures will automatically **expire 6 months** after coming into force.
- The Scottish Parliament may extend the measures for **a further two periods of 6 months**, meaning the longest the Act can stay in place is a total of 18 months.
- Scottish Ministers, where wishing to extend powers, must provide reasoning to the Scottish Parliament as to why.
- The Scottish Government must provide a report to Parliament **every 2 months** about the use of the Act's powers.
- Scottish Ministers may allow for the expiry of these measures earlier if they see it is no longer appropriate or proportionate.

SWC CONTACT DETAILS

2nd Floor, The Albany Centre, 44 Ashley Street, Glasgow, G3 6DS

www.scottishwomensconvention.org

Facebook, Instagram & Twitter: @SWCWomen

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