

COVID-19 Committee

By email: Covid.Committee@Parliament.Scot

15 September 2020

Dear Convener,

Evidence on the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 and The Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020

The Commission wishes to provide further information to the COVID-19 Committee following the evidence session on Wednesday 9 September 2020.

Expiry and Suspension of Provisions

The Commission welcomes the proposals set out in the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020. In particular, we are pleased to note the expiry of schedule 3, part 2, paragraph 11(1) relating to adults with incapacity.

We share the concerns of the Centre for Mental Health and Capacity Law at Edinburgh Napier University that during the crisis, adults with incapacity may have been moved to alternative settings without due legal process, with the potential for deprivations of liberty and inappropriate restrictions on autonomy. We therefore echo their call for the independent monitoring or review of discharges to ensure that rights are upheld.

We are supportive of the proposed suspension to schedule 3, part 2, paragraphs 11(2) and (3), relating to 'stopping the clock' on guardianship orders and certificates authorising medical treatment.

While we understand these provisions were necessary to ensure orders did not lapse, since the courts have now resumed the processing of non-urgent applications we are pleased that these provisions are to be suspended. This is important as blanket extensions to orders could result in restrictions imposed upon an adult for longer than necessary.

We support the Equality and Human Rights Commission's call for consideration to be given to including these provisions in subsequent early expiry regulations. Failing this, if it is deemed these provisions are required in future, they should only be revived where it is absolutely necessary and proportionate to do so and they should only apply for the shortest time possible, given the impact that these provisions have on the length of guardianship orders and the opportunities to review or appeal these.

Continuation of Provisions

While we generally support continuation of the Coronavirus (Scotland) Acts 2020 to effectively protect against the effects of COVID-19, we consider it important that there should be ongoing review of these provisions by way of parliamentary scrutiny.

In particular, we support the Children and Young Person's Commissioner's concerns about provisions relating to the rights of children and young people and we echo their call for considering these provisions for early expiry.

We remain concerned about the continuation of Part 4 of Schedule 4 of the Coronavirus (Scotland) Act 2020, regarding the extension of time limits for those remanded in custody pending trial.

Custody time limits are important as they safeguard unconvicted persons by preventing them from being held in pre-trial custody for an excessive amount of time. Where these time limits are insufficient, under the Criminal Procedure (Scotland) Act 1995, the courts have the power to extend certain time limits on cause shown. For this reason, we

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previously recommended that instead of a blanket extension to time limits, cases be extended on a case by case basis.¹

We continue to be concerned at the prospect of the extension of these provisions for a further 6 months. While we acknowledge the difficulties faced by the Scottish Courts and Tribunal Service, we understand that trials have now re-started and that remote hearings are working well. The conditions that existed 6 months ago do not exist to the same degree now. In view of this, we consider it would be proportionate to reduce the length of the extensions to reflect the changed circumstances of the crisis. The purpose of this is to ensure that the time an accused person spends in custody pending trial is as short as possible, and no more than absolutely necessary. This is particularly crucial as time on remand can have a detrimental effect on a person's family life, mental health and wellbeing, which is compounded as a result of the current severity of prison conditions under coronavirus restrictions.

We consider it imperative that the COVID-19 Committee monitor the increasing numbers of affected individuals and seek updated information on lengths of pre-trial detention, in order to ensure proper scrutiny of the practical effect of the regulations.

Yours sincerely

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¹ See <https://www.scottishhumanrights.com/media/2005/coronavirus-scotland-act-2020-briefing-april-2020.pdf>