

Criminal Justice Committee
Wednesday 9 October 2024
31st Meeting, 2024 (Session 6)

Temporary Justice Provisions in the Coronavirus (Recovery and Reform) (Scotland) Act 2022

Introduction

Today's evidence session provides an opportunity to question the Scottish Government on its plans for extending some of the remaining temporary justice provisions set out in the [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#), whilst expiring others.

This paper provides brief background information with a focus on the criminal justice system. However, those temporary justice measures relating to courts and tribunals affect civil as well as criminal proceedings. More detailed information is provided in a Scottish Government [statement of reasons on the proposed extension of temporary justice provisions](#) (23 September 2024).

Temporary justice provisions

The Coronavirus (Recovery and Reform) (Scotland) Act 2022 (the 2022 Act) set out a range of temporary justice provisions that were originally due to expire on 30 November 2023. It allowed the Scottish Government to make regulations to delay the expiry of some or all of the provisions, or to expire them early.

The 2022 Act limited the power to delay expiry (thereby extending relevant provisions) to two occasions:

- a delay of one year to 30 November 2024
- a delay of one further year to 30 November 2025.

Some temporary provisions were expired early in July 2023 by the [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(Early Expiry of Provisions\) Regulations 2023](#).

The case for extending some of the other temporary provisions beyond November 2023 was considered by the Criminal Justice Committee at its [meeting on 8 November 2023](#), when looking at the draft regulations which became the [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(Extension and Expiry of](#)

[Temporary Measures\) Regulations 2023](#). These regulations resulted in some further provisions being expired, whilst others were kept in force until 30 November 2024. Further information is set out in a [note by the clerk](#) for the meeting on 8 November 2023.

The Scottish Government is now seeking to further delay the expiry of some temporary provisions to 30 November 2025, whilst also expiring some. This is provided for in the following regulations:

- [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(Extension of Temporary Justice Measures\) Regulations 2024](#) (draft)
- [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(Early Expiry of Provisions\) Regulations 2024](#).

Table 1 provides a summary of which temporary justice provisions have already expired; as well as those which will either expire this November or be extended to November 2025 under the Scottish Government's plans.

Table 1

Temporary criminal justice provisions in the schedule of the 2022 Act	Effect of 2023 regulations	Proposals in 2024 regulations
Courts and tribunals: conduct of business by electronic means etc – documents Allowed for the electronic signing, sending and intimation of documents	extended to November 2024	further extend to November 2025
Courts and tribunals: conduct of business by electronic means etc – attending a court or tribunal Enabled virtual attendance at a court or tribunal	in part extended to November 2024 ¹	further extend to November 2025
Fiscal fines Increased the maximum level of fiscal fine to £500, and adjusted the scale of fines	extended to November 2024	further extend to November 2025
Failure to appear before court following police liberation Enabled the courts to modify the date required to attend court following a failure to appear due to Covid-19	expired November 2023	n/a
National jurisdiction for callings from custody Allowed custody cases to be heard in any court in Scotland	extended to November 2024	further extend to November 2025

¹ This extension did not apply to some civil court proceedings in relation to which reliance on the temporary justice provisions has been replaced by court rules.

Table 1 (continued)

Temporary criminal justice provisions in the schedule of the 2022 Act	Effect of 2023 regulations	Proposals in 2024 regulations
Criminal procedure time limits: extension of periods Extended the statutory time limits on:		
<ul style="list-style-type: none"> solemn procedure – time between first appearance and pre-trial/trial diet 	extended to November 2024	further extend to November 2025
<ul style="list-style-type: none"> summary only cases – time between commission of offence and commencement of proceedings 	extended to November 2024	expire November 2024
<ul style="list-style-type: none"> solemn procedure – time person can be held on pre-trial remand 	extended to November 2024	further extend to November 2025
<ul style="list-style-type: none"> summary procedure – time person can be held on pre-trial remand 	expired November 2023	n/a
<ul style="list-style-type: none"> time a person can be held on pre-sentence remand for inquiry into physical or mental condition 	expired November 2023	n/a
Criminal procedure time limits: adjournment periods Removed certain time limits on the adjournment of summary cases	expired November 2023	n/a
Proceeds of crime Allowed for postponement of confiscation proceedings affected by Covid-19	expired July 2023	n/a
Prison and young offenders institutions Power of emergency release in response to effects of Covid-19	extended to November 2024	expire November 2024

In relation to criminal procedure time limits, the continuation of the temporary provisions until November 2025 applies to solemn procedure cases only. This includes the following in relation to the period up to trial for non-custody and custody cases:

- time between accused's first appearance on petition and trial – pre-pandemic limit of 12 months extended to 18 months
- time between accused being remanded and trial – pre-pandemic limit of 140 days extended to 320 days.

These longer periods apply automatically. There is also the possibility, both pre-pandemic and now, to ask a court for an extension to a time limit on a case-by-case basis.

The justification advanced for continuing the longer time limits in solemn procedure cases is based on the ongoing court backlog resulting from the Covid-19 pandemic. Although extensions can be sought in individual cases, it is argued that reliance on

this would (without the automatically longer time limits) divert too much court time towards consideration of applications for extension.

Criminal court backlog

In relation to the ongoing criminal court backlog, the Scottish Government's [statement of reasons](#) for seeking the further extension of temporary provisions notes that:

“While there has been a considerable reduction in the number of scheduled trials in the summary courts, the position in the solemn courts remains challenging. At sheriff and jury level, the number of outstanding trials rose sharply from a pre-pandemic average of 499 in 2019/20 to peak at 2,472 in January 2023 – it has since fallen to 1,445 in July 2024. The number of scheduled trials in the High Court steadily increased from a pre-pandemic figure of 390 in 2019/20 to around 700 in December 2022, where it remains (the July 2024 figure was 709).” (para 85)

The statement goes on to say that this backlog, coupled with an increase in the number of new solemn cases, has led to a considerable increase in the length of time it takes such cases to come to trial.

[Statistics](#) published in September 2024 by the Scottish Courts and Tribunal Service include information about the following aspects of criminal cases:

- the average time in weeks between the holding of a pleading diet and of a trial at which evidence is led
- the number of trials scheduled to be held (i.e. trials outstanding).

Table 2 reproduces relevant solemn case figures providing a comparison between the position at the end of August 2024 (latest available data) with that at the same point in the previous four years, plus end March 2020 as a pre-pandemic comparator.

Table 2

Court	March 2020	Aug 2020	Aug 2021	Aug 2022	Aug 2023	Aug 2024
High Court						
pleading diet to evidence led trial (weeks)	22	34	51	49	46	43
trials scheduled	390	375	432	636	656	708
Sheriff solemn						
pleading diet to evidence led trial (weeks)	11	*	45	44	43	36
trials scheduled	497	553	1,781	2,340	2,109	1,368

* Data not available

Proposals for permanent provisions

The [Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews \(Scotland\) Bill](#) (introduced 24 September 2024) includes measures seeking to make permanent provision in some areas covered by the current temporary justice provisions:

- allowing for the electronic signing and sending of documents in criminal cases
- enabling virtual attendance at a criminal court
- increasing the maximum level of fiscal fine to £500, along with adjustments to the scale of fines
- having a national jurisdiction for callings from custody.

The Bill does not seek to make permanent provision in relation to:

- solemn procedure time limits – the Scottish Government has stated that it wishes to see a return to pre-pandemic time limits once that can be done without undue negative impact on the progress of court cases
- civil court proceedings – the intention is to make any permanent provision through court rules.

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