

## **Covid-19 : The Coronavirus (Scotland) Act(s) 2020**

The Coronavirus / Covid-19 pandemic prompted the Scottish Government to introduce some temporary measures to mitigate the effects of the shutdown. The new legislation, The Coronavirus (Scotland) Act 2020 (CSA) came into effect on 7 April 2020. Further legislation, the Coronavirus (Scotland) (No.2) Act 2020 (CSA2), became law on 27 May 2020.

This article summarises the changes in the law that most affect our areas of practice.

**Please note, due to the pace at which the impact of the present Coronavirus / Covid-19 pandemic is evolving, this article can only seek to offer insights as at the date of publication. It is acknowledged that the position may change over the coming days, weeks and months.**

### **What changes are there to housing law?**

Please see our [Covid-19 guide for private landlords regarding changes to residential tenancies](#) for a summary of the changes to housing law.

### **I have heard some courts are closed and hearings are being cancelled. What does the CSA2 say about that?**

Some courts have closed altogether but their business is being dealt with at other locations.

The courts have been putting off all non-urgent hearings. If a case is considered urgent, then it is likely to proceed. However, only very few cases are considered to be urgent, so unless the court is persuaded that any particular case has to proceed now, then it may not.

The Scottish Courts and Tribunals Service has recently announced that processing of non-urgent cases may resume shortly but subject to clearing the backlog that has built up. Some hearings may take place by video link rather than having a hearing in court. The CSAs provide for the courts to be able to do this and to allow court documents to be lodged electronically, even where normally an original document or signature would be needed.

The Government seems to be moving towards trying to have hearings conducted remotely or in writing only as an alternative to traditional hearings. However, criminal and urgent civil business are still expected to take priority and if ordinary civil cases do start to be heard then there are likely be logistical barriers to overcome in each case.

Our debt recovery team offers a guide on these matters [here](#).

### **I have heard that Freedom of Information (FOI) and document publication rules have been modified. What are the changes?**

The Government has changed the rules so that bodies that are required to respond to FOI requests have more time to do so. They now have an extra forty working days.

The CSAs also make provision for some bodies to be allowed to extend the compliance period by up to another forty working days, but this will require a further enactment before it will become law.

If any body fails to comply with a FOI request and that failure is linked to the effects of the coronavirus pandemic, then the Information Commissioner has the power to excuse the failure.

If a public body has a duty to publish a report or other document within a certain time limit, that duty can be postponed provided the body explains its decision and complies with the duty as soon as it becomes reasonably practicable to do so.

## **Is there any effect on planning permissions and listed building consent?**

Yes. If a grant of planning permission is about to expire, then it will not expire until a year after the relevant part of the CSAs came into force. Likewise if an application following upon permission being granted in principle has to be made within the period covered by the CSAs, that time limit will be extended in the same way.

Similar provisions have been made for listed buildings consent: any consents that would have lapsed between 27 May 2020 and 6 October 2020 will instead not lapse until 6 April 2021. These dates are subject to change by further regulations.

## **What changes will there be to bankruptcy and insolvency law?**

The insolvency of companies is reserved to Westminster and there is expected to be provision made by the UK Government. See our [Covid-19 Guide for businesses facing insolvency, and associated directors' duties](#).

In Scotland, the CSAs provide that if an individual (or a trust, partnership or unincorporated association) intends to apply for voluntary bankruptcy, he will be allowed an extended time for that application to be made and dealt with, without being the subject of bankruptcy proceedings or other debt enforcement by his creditors in the meantime. This time is normally six weeks but it is now extended to six months.

In addition, there is normally a rule that prevents someone applying for voluntary sequestration twice within a year. That prohibition has been removed temporarily.

A debtor can apply to the court for his own bankruptcy, subject to the total debts being between certain limits. The upper limit has been raised from £17,000 to £25,000, which means anyone who owes more than £1,500 but less than £25,000 can apply for his own bankruptcy.

The minimum total debt for which a debtor can be bankrupted by a creditor or creditors has also been raised, from £3,000 to £10,000.

The changes also make some procedural adjustments, such as allowing creditors' meetings to take place electronically, for certain documents to be formalised electronically and to the fees payable under certain circumstances.

## What other changes are in the CSAs?

There are substantial sections on criminal court proceedings, licencing of various kinds, proceeds of crime, and changes to provisions and attendance at children's hearings and regarding care of adults with incapacity, which are not commented on here.

There are also various other miscellaneous provisions, some of which are:

- Local authorities may exclude the public from council meetings
- Public bodies can be given more time to publish their accounts
- Certain devolved social security application time limits are extended
- The period of notice for termination of commercial leases for non-payment of rent is extended from 14 days to 14 weeks. For more information on this see our [Covid-19 Guidance for commercial property landlords](#)
- Land registration procedures have been modified to allow registration by e-mail
- The period for anatomical examination of cadavers with permission is extended
- The process for making regulations has been modified to reduce the processes required
- Business Improvement Districts arrangements will be extended to take account of the emergency period
- Muirburning is banned for the duration of the emergency period
- Health Boards may take control of, or purchase, failing care homes
- The government is mandated to find a way to ensure marriages can proceed, though there are no details at present
- Those who had to pay an additional dwelling supplement when purchasing a second property will have an extra 18 months (now three years in total) to be eligible to reclaim additional payment if the primary property is sold within that time
- Non-domestic rates may be reduced but there are no details yet
- Documents may be notarised without the signatory and notary being present together in the same place
- Certain dwellings will be exempt from council tax if the reason for their being empty is because of the coronavirus
- Businesses based or taxed in a tax haven will not be eligible for coronavirus grants

If you would like any additional information regarding the impact of the new legislation, please get in touch with your usual contact at Lindsays, or:

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