

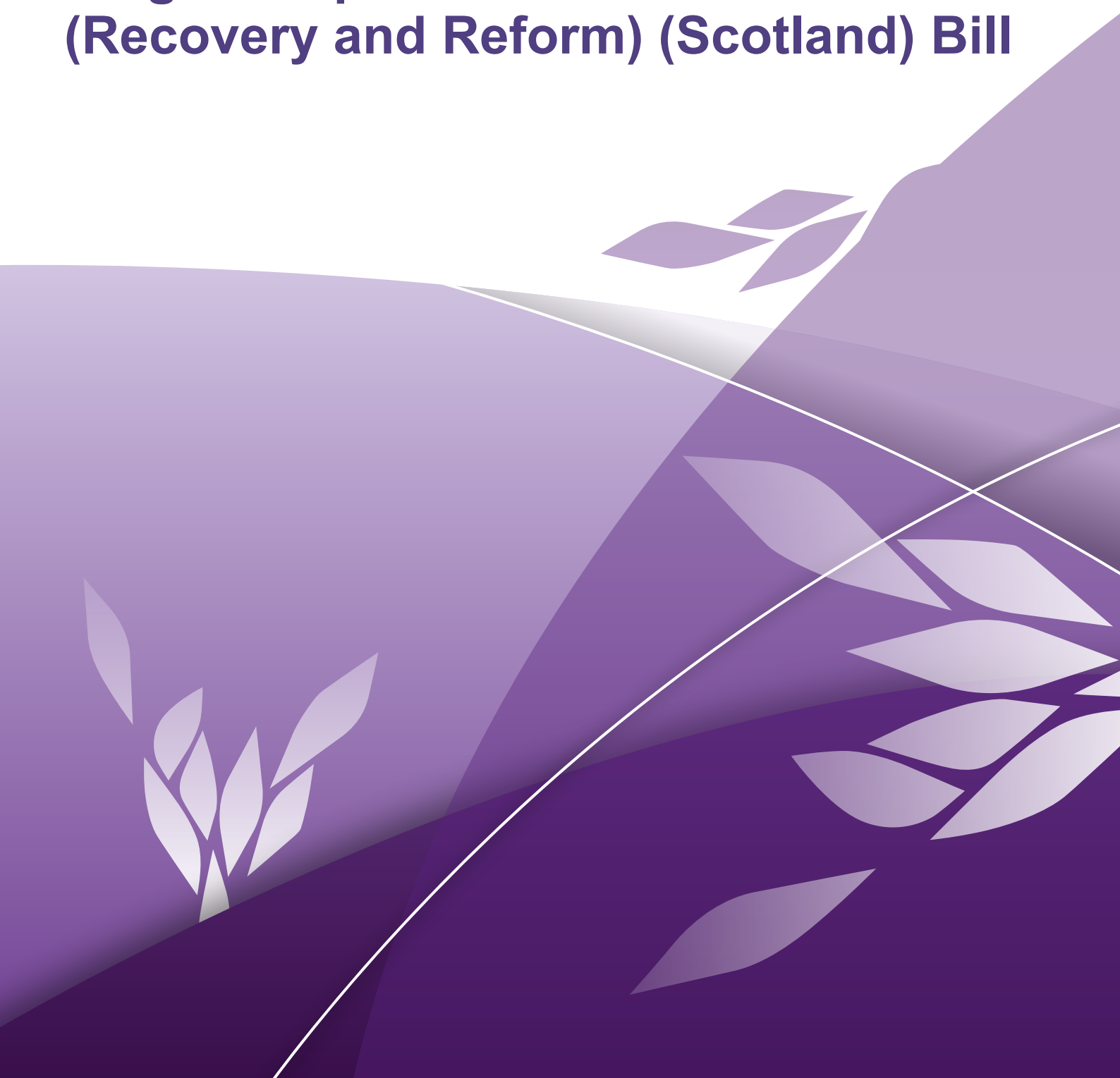


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## COVID-19 Recovery Committee

# Stage 1 Report on the Coronavirus (Recovery and Reform) (Scotland) Bill



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# COVID-19 Recovery Committee

To consider and report on matters relating to COVID-19 falling within the responsibility of the Cabinet Secretary for COVID Recovery and other Scottish Ministers where relevant, including—

- (a) Cross government coordination of COVID-19 recovery policies and strategic review;
- (b) the operation of powers under the Coronavirus (Scotland) Act, the Coronavirus Act and any other legislation in relation to the response to COVID-19;
- (c) any secondary legislation arising from the Coronavirus (Scotland) Act; and
- (d) and any other legislation or policy in relation to the response to COVID-19.



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# Committee Membership



**Convener**  
**Siobhian Brown**  
Scottish National Party



**Deputy Convener**  
**Murdo Fraser**  
Scottish Conservative  
and Unionist Party



**Jim Fairlie**  
Scottish National Party



**John Mason**  
Scottish National Party



**Alex Rowley**  
Scottish Labour



**Brian Whittle**  
Scottish Conservative  
and Unionist Party

# Introduction

## Overview of scrutiny

1. The Coronavirus (Recovery and Reform) (Scotland) Bill ('the Bill') was introduced in the Scottish Parliament by the Scottish Government on 25 January 2022. The COVID-19 Recovery Committee was designated as the lead committee.<sup>1</sup> Its focus was on the Bill's general principles, as well as the provisions in Part 1, Part 3 (other than the justice-related provisions) and Part 6. This report details the COVID-19 Recovery Committee's scrutiny of these provisions and the Bill's general principles at Stage 1.
2. The Criminal Justice Committee was designated as a secondary committee and its focus was on the justice-related provisions in Part 3 and Part 5. The Local Government, Housing and Planning Committee was also designated as a secondary committee and its focus was on the tenancies provisions in Part 4. The Education, Children and Young People Committee also had an interest in the Bill and considered the provisions in Part 2. These committees are referred to collectively as the "secondary committees" for the purposes of this report.
3. The lead and secondary committees published a joint call for views on 3 February 2022. The joint call for views invited respondents to complete either a detailed response, or a short survey. The committees received 89 written submissions and 3,926 respondents completed the survey. The lead and secondary committees also took oral evidence from stakeholders and Scottish Ministers at Stage 1. The COVID-19 Recovery Committee notes the very high level of participation in the survey and thanks everyone who shared their views on the Bill, both in person and in writing. The Committee notes these views and that the responses to the short survey and the broader consultation were self-selecting. As those responding were self-selecting, this does not necessarily produce a statistically representative sample of Scottish public opinion. Extracts of the minutes of the COVID-19 Recovery Committee's consideration of the Bill and the written evidence received are provided in **Annexe A**.
4. The secondary committees have reported separately on their scrutiny of the Bill. The lead and secondary committees' reports should be read together, alongside the Delegated Powers and Law Reform Committee's Stage 1 report and the Finance and Public Administration Committee's consideration of the Bill, which is detailed below. The Committee notes the recommendations contained in these reports and invites the Scottish Government to respond to them. The Stage 1 reports by the secondary committees and the Delegated Powers and Law Reform Committee are provided in **Annexe B**.

## Purpose of the Bill

5. The Scottish Government was given time-limited emergency powers to respond to COVID-19<sup>i</sup> in the Coronavirus Act 2020,<sup>2</sup> the Coronavirus (Scotland) Act 2020,<sup>3</sup> and the Coronavirus (Scotland) (No.2) Act 2020.<sup>4</sup> Some of these provisions were

extended by the Coronavirus (Extension and Expiry) (Scotland) Act 2021.<sup>5</sup> These Acts are referred to collectively as the "emergency legislation" for the purposes of this report. This Bill will make permanent some of the time-limited powers that were contained in the emergency legislation and will extend others for a further period. The Policy Memorandum explains that the emergency powers that the Bill seeks to make permanent have "delivered improvements for service users and improved efficiency". In the Scottish Government's view, legislating to retain some of these provisions will support "resilience against future public health threats".<sup>6</sup>

6. The provisions that will be retained permanently are contained in Parts 1-4 of the Bill. These cover a wide range of measures, including: public health protection powers; the making of arrangements for the administration of vaccination and immunisation; the use of public health measures in education settings; measures grouped under the heading "public service reform" that include the remote delivery of public services and other miscellaneous measures; as well as measures related to tenancies and evictions.
7. The provisions that will be extended for a further time-limited period are set out in Part 5 of the Bill. The purpose of extending these provisions is to support the Scottish Government's Recover, Renew, Transform programme and to address backlogs that exist in parts of the justice system.<sup>7</sup> Section 38 introduces the schedule to the Bill, which contains the time-limited provisions. Section 40 specifies that these provisions will expire on 30 November 2023, unless extended by regulations. The further extension of these provisions cannot continue beyond 30 November 2025.
8. The Bill also introduces new measures that were not contained in the emergency legislation, which the Scottish Government considers are complimentary to the overall purpose of the Bill. Part 3 contains new provisions that relate to the registration of live births (Section 18) and the Register of Inhibitions (Section 25).
9. Section 1 of the Bill inserts a new Part 5A relating to "public health protection measures" into the Public Health etc. (Scotland) Act 2008. These provisions contain broadly similar measures to the comparable provisions in the temporary emergency legislation with some substantive changes. The scope of the national public health protection power is broadened from being limited to COVID-19 to include a response to any infectious disease or biological or chemical contamination. Section 1 also introduces a new distinction between health protection regulations that "indirectly" or "directly" impose restrictions or requirements. It also contains a new power to "modify any enactment (including this Act)" in connection with making such health protection regulations in the newly created Section 86F(2)(d). These measures are considered in more detail in the relevant sections of this report.

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i "COVID-19" for the purposes of this report refers to the disease caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2).



## Finance and Public Administration Committee and Delegated Powers and Law Reform Committee consideration

10. A summary of the estimated costs and savings to the Scottish Administration, Local Authorities and other bodies, individuals and businesses is provided in the Financial Memorandum accompanying the Bill. The Financial Memorandum explains that:
  - ” For a number of the Bill’s provisions, there are no specific costs and savings which have been identified. For some provisions, including in relation to Public Health and Educational establishments, costs will not arise unless the regulation making powers that the Bill provides for require to be used.

In relation to savings, some specific savings have been identified, for example, in relation to electronic registration of deeds. Furthermore, many of the Bill’s provisions identify relatively small savings and efficiencies to public bodies and service users arising from virtual or remote activity, which are not all quantified but may bring significant combined savings across the public sector.<sup>8</sup>
11. The Finance and Public Administration Committee issued a call for evidence on the Financial Memorandum, which was open from 3 February 2022 to 25 February 2022. Police Scotland, the Scottish Association of Landlords and the Sustainable Water Company Ltd responded to the call for views. Police Scotland noted that it is broadly content with the estimated costs in the Financial Memorandum, but highlighted some uncertainty over the potential costs associated with the "virtual appearance model". The Scottish Association of Landlords raised concerns that the provisions in Part 4 of the Bill could reduce the supply of homes available in the private rented sector, which may lead to increases in rent for tenants. The Sustainable Water Company Ltd expressed the view that the estimated costs are not reasonable nor accurate.
12. The Bill contains 16 delegated powers, which were considered by the Delegated Powers and Law Reform Committee in its report published on 29 March 2022. The COVID-19 Recovery Committee notes that the Delegated Powers and Law Reform Committee has made recommendations on the use of the made affirmative procedure in the Bill, including the delegated powers contained in Part 1. The issues highlighted by the Delegated Powers and Law Reform Committee have been given further consideration in the body of this report.

# Part 1: Public health protection

## Modifications of the Public Health etc. (Scotland) Act 2008

### Overview

13. Chapter 1 of the Bill contains 3 sections that modify the Public Health etc. (Scotland) Act 2008. Section 1 of the Bill inserts a new Part 5A "Public health protection measures" into the Public Health etc. (Scotland) Act 2008. The Policy Memorandum to the Bill explains that the purpose of Section 1 is to enable Scottish Ministers to "respond to a public health threat", "to ensure important safeguards" and "to enable the monitoring of potential threats".<sup>9</sup>
14. Section 2 of the Bill concerns Scottish Ministers' powers to make international travel regulations under section 94 of the Public Health etc. (Scotland) Act 2008. The Policy Memorandum explains that the purpose of this section is to "to ensure that the international travel regulation-making powers are updated to align with the new public health protection power".<sup>10</sup> This includes enabling regulations to give effect to a broader category of international "arrangements" and clarifying that the regulations may not require persons to undergo medical treatment, including vaccination and other prophylactic treatment.
15. Section 3 amends the definition of "premises" as set out in section 123 of the Public Health etc. (Scotland) Act 2008 to include tents and offshore installations.

## Public health protection regulations

### Legislative framework for public health threats

16. The UK Coronavirus Act 2020 enabled Scottish Ministers to make regulations for public health protection. The powers were set out in Schedule 19 of the Act and were limited in scope to deal with the COVID-19 outbreak. According to the Explanatory Notes to the Act, these temporary provisions were intended "to increase consistency of the powers available across the UK". This was achieved by conferring regulation-making powers on Scottish Ministers that were "...broadly based on the existing powers that apply in England and Wales".<sup>11</sup> These temporary powers were also conferred on Northern Irish Ministers.
17. The provenance of the public health protection powers in the UK can be traced back to the mid-2000s. Currently England and Wales is the only jurisdiction in the UK that has permanent public health protection powers, which are contained in Part 2A of the Public Health (Control of Disease) Act 1984. Part 2A was inserted into the 1984 Act by the Health and Social Care Act 2008. These provisions enabled the International Health Regulations ("IHR") 2005 (which came into effect in 2007) to be implemented in England and Wales. The IHR are, together, a legally binding instrument of international law which creates "...an overarching legal framework that

defines countries' rights and obligations in handling public health events and emergencies that have the potential to cross borders".<sup>12</sup> The IHR were revised in 2005 to take account of new threats to global public health, as noted in the Explanatory Notes to the Health and Social Care Act 2008:

” The previous International Health Regulations (1969) were concerned with action at international borders in relation to three specific infectious diseases (cholera, plague and yellow fever), but increasingly were recognised as unable to deal with new threats, such as SARS. The new IHR are concerned with infectious diseases generally, and also with contamination. They also pay more attention than their predecessors to the arrangements needed in-country to deliver an effective response to health risks.<sup>13</sup>

18. The Health and Social Care Bill received its first reading in the House of Commons on 15 November 2007 and obtained royal assent on 21 July 2008. Comparable provisions for public health protection were not included in the then Public Health etc. (Scotland) Bill, despite it being scrutinised concurrently in the Scottish Parliament (it was introduced on 25 October 2007 and received royal assent on 16 July 2008). This issue is considered in detail in the joint written evidence from Dr Andrew Tickell and Professor Alison Britton of Glasgow Caledonian University.<sup>14</sup> Their submission observes that "there appears to have been a degree of dislocation characterising the two Bills, with little cross-reference or sharing of best practice between them in parliamentary scrutiny."<sup>15</sup> It concludes that:

” In retrospect, the Public Health (Scotland) Act was a missed opportunity to recast the basic norms of Scottish public health law in more flexible and resilient terms, and was based on flawed assumptions about the nature of the potential public health threats Scotland might face, and the kinds of regulatory responses which may be required to [respond to] them ... effectively.<sup>16</sup>

19. Section 1 of the Bill inserts a new Part 5A relating to "public health protection measures" into the Public Health etc. (Scotland) Act 2008. The Committee considered how the temporary provisions in Schedule 19 of the Coronavirus Act compare to the Public Health (Control of Disease) Act 1984 and Part 1, Chapter 1 of the Coronavirus (Recovery and Reform) (Scotland) Bill. This comparison is provided in **Annexe A**. The comparison appears to show that the provisions in Schedule 19 were largely copied from the Public Health (Control of Disease) Act 1984. The Committee heard from legal academics who noted that the drafting in Section 1 of the Bill has been revised but contains, for the most part, broadly similar measures to the comparable provisions in the temporary emergency legislation with some substantive changes.<sup>17</sup>
20. New Section 86A in the Bill provides Scottish Ministers with a power to make public health protection regulations in relation to "any infectious disease or biological or chemical contamination". The scope of this power is wider than that contained in Schedule 19 of the Coronavirus Act 2020, which was limited to COVID-19. It also defines "infection or contamination" as being something which "presents or could present a significant harm to human health".
21. The Committee heard from experts in public health policy and law who considered that the legislative framework in the Bill was sufficiently robust to enable Scottish Ministers to coordinate a national response to future public health threats. Professor

Paul Hunter of the University of East Anglia informed the Committee that a robust approach to public health resilience planning must be flexible and sufficiently broad in scope to deal with likely eventualities:

” I have heard it said that military planners are always planning for the previous war, not the next war, and the same applies to infectious diseases. Whatever we do has to be flexible, because there is no guarantee that the next outbreak—a major pandemic or infectious disease threat—will be anything like what we have just lived through. It has to be flexible to cope with new threats, whatever they may be, and they may not be anything like what we have experienced with COVID. <sup>18</sup>

22. Civil contingency legislation creates requirements to plan for emergencies, whereas Chapter 1, Part 1 of this Bill contains measures for responding to a public health threat. <sup>19</sup> Professor Hunter considered that the English and Welsh legislative model for dealing with public health threats, which informs Chapter 1 of Part 1 of the Bill, is drafted in sufficiently clear yet flexible terms to deal with future public health threats. <sup>20</sup>
23. The Committee also heard from Scottish public health stakeholders who supported the inclusion of these provisions in the Bill. Public Health Scotland considered that these provisions would "enable Scotland to respond flexibly and proportionately to specific threats as they arise." <sup>21</sup> The Alliance also supported the provisions, noting that they would enable Scottish Ministers to make regulations "...quickly in the event of a future pandemic, with tailored and proportionate measures." <sup>22</sup> COSLA also supported the general principles behind this part of the Bill, noting "...the need for a quick response to changing conditions created by COVID, and potential future public health emergencies, is well recognised by Councils". <sup>23</sup>
24. The Committee also heard from legal experts about whether the legislative framework achieves its intended aims. Professor Fiona de Londras of the University of Birmingham noted that the Bill "levels up" public health powers in Scotland to make them comparable with those in the Public Health (Control of Disease) Act 1984, but did not take a view on whether it is appropriate to use the 1984 Act as a "blueprint" for public health protection legislation. <sup>24</sup> Nonetheless, Professor de Londras welcomed the definition of "infection or contamination" in new section 86A(2)(a), which she considered "prescribes a clear threshold to trigger the powers". <sup>25</sup> Dr Tickell and Professor Britton concluded that the main provisions of Part 1 of this Bill are generally in keeping with the 1984 Act and "...will establish a more flexible and resilient framework for coordinating the public health response to any future public health emergencies Scotland or any part of it may encounter than the existing framework." <sup>26</sup>
25. Other respondents did not support delegating the public health protection powers to Scottish Ministers. The Committee received 3,926 responses to its short survey. 1,083 people commented on the public health protection powers. A clear majority of these respondents (81.9%) to the Committee's short survey did not support their delegation to Scottish Ministers. <sup>27</sup> The respondents who expressed concern noted that the use of these powers may disproportionately impact people based on their age, income, disability or other characteristic. Others expressed concern that these

provisions may result in restrictions on personal liberty and digital exclusion.

26. The Committee considered alternative approaches to the Bill, including whether it would be preferable to have in place draft emergency legislation, which could be passed into law but not commenced, or kept in reserve and passed as an emergency bill should the need arise. Professor de Londras noted that comparative examples of this legislative model can be drawn from Westminster, such as the Terrorism Prevention and Investigation Measures Act 2011, which is ready to be commenced and used if required. Professor de Londras also noted that Scottish Ministers could create template regulations that could be debated and scrutinised by parliament and then triggered through a ministerial power in the framework legislation in the event of a public health emergency.<sup>28</sup>
27. The Delegated Powers and Law Reform Committee considered the delegated power contained in the new section 86A(1). The majority of the Committee was content with the delegation of the power in principle, but some of its Members considered that the Scottish Government had not made a sufficient case for why this power should be delegated. A minority of its members considered that such powers could be brought forward quickly under primary legislation if required in future.<sup>29</sup>
28. The COVID-19 Recovery Committee asked the Deputy First Minister and Cabinet Secretary for COVID Recovery (hereafter "the Deputy First Minister") why the provisions in Section 1 of the Bill were not included in the Public Health etc. (Scotland) 2008 Act when it was introduced and comparable measures were being implemented into public health legislation in England and Wales. The Deputy First Minister noted in follow-up written evidence to the Committee that the scope of the measures contained in the then Public Health etc. (Scotland) Bill did not include the national public health protection measures being introduced into English and Welsh legislation at that time. Mr Swinney explained in his written evidence that the Scottish legislation had a different intent to the public health legislation being implemented in England and Wales in 2007/8:
- ” The provisions within each Act differed, largely based on the intent behind the legislation. The Scottish legislation aimed to strengthen public health protection in Scotland by enabling Health Board-led management of disease outbreaks. It was not intended to provide a broad power that would enable a coordinated response, such as the powers we have relied upon during the pandemic.<sup>30</sup>
29. The Deputy First Minister explained to the Committee during his oral evidence that the Bill seeks to ensure that "... we have a legislative framework in place that enables us to think in advance about the types of legislative changes that we might need to make and how we can make them".<sup>31</sup> The Deputy First Minister considered that the new Part 5A being inserted into the Public Health etc. (Scotland) Act 2008 would provide Scottish Ministers with appropriate powers to deal with the emergence of a major national public health issue, such as a pandemic, and ensure that Scotland's public health legislation met international standards for dealing with such events, noting:

” It is a well-expressed view of the World Health Organization that countries should have appropriate measures and mechanisms in place to enable them to respond swiftly and appropriately to a pandemic. The Government has reflected on that as a lesson from the pandemic, and I think that that point has also been made to the committee by legal academics. Therefore, there is an opportunity for us to consider in a slower timeframe what that range of powers could look like and what powers could be enacted, should we face that situation.<sup>32</sup>

30. When asked about the possibility of using emergency bills in the future, as an alternative to this legislation, Mr Swinney stated that it is important for parliament to consider what legislation may be necessary to deal with future public health threats during a "calm period" to ensure legislation of this nature receives appropriate parliamentary scrutiny.<sup>33</sup>

**31. The Committee notes that the provisions in Chapter 1, Part 1 will bring Scotland into line with comparative public health legislation in England and Wales and the International Health Regulations 2005. Some members<sup>ii</sup> of the Committee agree with the general purpose of these provisions to enable Scottish Ministers to coordinate a national response to future public health threats. Other members<sup>iii</sup> of the Committee consider that the Scottish Government has not made a sufficient case for why the powers should be made permanent and instead consider that these powers could be brought forward quickly under primary legislation if required in future.**

### **Limits on the use of power: regulations directly and indirectly imposing restrictions or requirements**

32. New section 86B makes provision for where the regulations impose restrictions or requirements directly on the face of the regulations. This introduces a proportionality requirement, whereby Scottish Ministers may only exercise the public health protection powers if they consider that the restriction or requirement they are creating is proportionate to what is sought to be achieved by imposing it. New Section 86C makes further provision, that any decision taken to impose the restriction or requirement may only be taken if the person exercising that decision-making power considers that it is proportionate to do so.

33. Many stakeholders highlighted that the proportionality safeguard presents its own challenges. This was noted by Professor Paul Hunter of the University of East Anglia, who explained:

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ii Siobhian Brown, Jim Fairlie and John Mason.

iii Murdo Fraser, Alex Rowley and Brian Whittle.

” One of the issues that has come out very strongly during the COVID pandemic is who decides what is, or is not, proportionate. There are very different groups—individuals and individual scientists, not all of whom have any prior experience of infectious disease—who have very strong views one way or the other. To a certain extent, some of them could be accused of maintaining those views despite the evidence, not because of it. Ultimately, who makes the decision? Is it the minister, who generally will not be somebody with a public health or infectious disease background? How will that person be advised? How will they come to a decision about what is proportionate, often in a setting where there is considerable uncertainty? <sup>34</sup>

34. Professor Fiona de Londras of the University of Birmingham, clarified that determining what is "proportionate" can mean different things, depending on whether it is being judged from a scientific or public law and human rights perspective. She explained that scientists will advise ministers on the public health risks and possible public health outcomes. In her view, however, the fundamental question of whether something is proportionate "is not answerable by scientific methods", instead this is a "matter of judgement". In making decisions about how to respond to a public health threat, Professor de Londras explained that ministers must weigh up "...all the different costs, including human rights costs, against the likelihood of success and considering whether the measure is the least intrusive available". <sup>35</sup>

35. The Scottish Government has adopted a four-harms decision-making framework for responding to COVID-19 <sup>36</sup>, which acknowledges that the public health response to the disease should consider its direct and indirect impacts. <sup>37</sup> Public Health Scotland supported the delegation of these public health protection powers to Scottish Ministers, but highlighted the complexity faced by the Scottish Government when assessing the four harms and what is proportionate in the circumstances, noting:

” We would however stress that the exercise of these powers can themselves have a deleterious effect on public health. It is therefore vital that they are used proportionately, based on the best available data, evidence and public health advice. <sup>38</sup>

36. COSLA also supported the delegation of these powers to Scottish Ministers, but highlighted how local authorities may need to provide additional support to people who may be disproportionately impacted by public health protection measures. <sup>39</sup> Examples highlighted by COSLA included people subject to immigration control who have no recourse to public funds and minority ethnic communities, including the Gypsy/Traveller community. The Scottish Association of Social Work also supported the delegation of these powers to Scottish Ministers, but noted that caution should be exercised when making decisions about what action is proportionate to the threat faced, stating:

” Any government with power to enact strict lockdown measures must also acknowledge its responsibility to fully risk assess and take into account the wide ranging impact of enforcing such rules. Future public health emergencies might not warrant such a strict response and, if the government should retain these powers, any response must be proportionate to the level of threat facing the population.<sup>40</sup>

37. Dr Andrew Tickell and Professor Alison Britton of Glasgow Caledonian University noted that the courts will play an important check and balance on the use of these powers. They explained that the courts will be able to determine whether decisions are lawful on common law grounds and in terms of their compatibility with the European Convention on Human Rights. In their view, judicial scrutiny of the exercise of these powers is likely to focus on whether their use is proportionate. Dr Tickell and Professor Britton noted that whilst the courts enjoy what they refer to as a "margin of appreciation" in making decisions about what is proportionate in the circumstances, the courts will intervene when necessary, highlighting that there had been a successful challenge to a restriction on public worship during the COVID-19 pandemic.<sup>41</sup>

38. The Committee raised these issues with the Deputy First Minister who agreed that the proportionality test is fundamental to the use of these powers and agreed that parliamentary and judicial scrutiny is an important check and balance on the decisions that are taken, noting:

” We have wrestled with that question on countless occasions over the course of the past two years. We have come to conclusions about when we judge measures to be proportionate and have withdrawn measures, because we did not believe that they were proportionate at that particular time. Ultimately, those decisions are made by ministers and, as with all decisions that are taken by ministers, they are justiciable. There have been two legal challenges to the provisions that we have had in place, and at the heart of those questions, which the courts have wrestled with, was the question of proportionality. Proportionality is not a tabulated concept, but one that is based on the availability of evidence to enable ministers to take rational decisions that can be any government withdefended in the courts, if necessary.<sup>42</sup>

39. One way that the Bill tries to provide further parameters around what is proportionate in the circumstances is to provide a higher threshold for the use of special restrictions and requirements (as set out in new Section 86E). The threshold for general public health protection measures in new Section 86A is an infection or contamination that presents or could present a "significant harm to human health". In order to make special restrictions or requirements, such as a requirement to abstain from working or trading, the threat must be "serious and imminent". This distinction is also contained in the comparable public health legislation in England and Wales.<sup>43</sup>

40. Professor de Londras agreed that this is a higher threshold than what is provided for in Section 86A, but highlighted that further clarification could be provided on the face of the Bill as to the factors that will determine whether the higher threshold is met. Professor de Londras explained:



” It is notable that while the policy memorandum does outline the kinds of factors that might be considered in determining whether a threat to public health is serious and imminent (it mentions for example severity of disease; transmissibility of infection; the size of the exposed population; the susceptibility of exposed population; availability of diagnostic tests, treatments, and vaccinations; and the potential impact on critical services), the Bill itself does not include any such indicia of severity and imminence on which a ministerial determination might be based. <sup>44</sup>

Professor de Londras suggested that amending the Bill to include relevant factors "would provide Ministers with explicit direction as to how to apply what has proven to be a notoriously vague test when deployed in e.g. emergency contexts comparatively". <sup>45</sup>

41. The Policy Memorandum also explains that another safeguard on the use of these powers is the distinction drawn in the Bill between regulations *directly* imposing restrictions or requirements (new Section 86B) and regulations *indirectly* imposing restrictions or requirements (new Section 86C). <sup>46</sup> This distinction is not contained in the emergency legislation or comparable public health legislation in England and Wales. The Committee sought clarification from the Scottish Government as to why the legislation makes this distinction and how it will operate in practice. The Deputy First Minister explained that the distinction of "indirectly imposing restrictions or requirements" has been included in the Bill in order to ensure that all possible uses of the powers are provided for in the legislation, noting:

” The indirect provision is where we are trying to find every other possible avenue that needs to be closed off to ensure that we have a system that is appropriate for the challenges that we face. <sup>47</sup>

The Deputy First Minister provided examples of how the indirect imposition of restrictions or requirements may be used in practice when he provided written evidence to the Committee, noting:

” ...regulations might give local authorities the power to require that certain types of premises have to close – but the closure would not happen directly as a result of the regulations; it would happen when the local authority makes the decision to do so. <sup>48</sup>

42. **The Committee notes that the inclusion of a higher threshold for special restrictions and requirements will bring Scotland into line with English and Welsh legislation. The Committee considers nonetheless that the Bill could be strengthened by providing a non-exhaustive list of factors for Scottish Ministers to consider when determining whether a threat is "serious and imminent". Relevant factors may include the severity of disease; transmissibility of infection; the size of the exposed population; the susceptibility of exposed population; availability of diagnostic tests, treatments, and vaccinations; and the potential impact on critical services. The Committee therefore invites the Scottish Government to bring forward an amendment at Stage 2 that sets out relevant factors which Scottish**

## Ministers may take account of when determining whether a threat is serious and imminent.

### Parliamentary oversight

#### *Made affirmative procedure*

43. The Bill contains measures to enable Scottish Ministers to act urgently in a public health emergency. Public health protection regulations made under new section 86A(1) will be subject to the affirmative procedure, unless Scottish Ministers consider that the regulations need to be made urgently. In the latter case, the regulations may be made subject to the made affirmative procedure. If regulations are made to revoke or partially revoke measures contained in regulations made under new section 86A(1), those regulations must be laid before the Parliament but are not subject to any further procedure. In practice, this means measures that revoke regulations can be implemented quickly.
44. Drawing on the experience of the COVID-19 pandemic, Professor de Londras noted that the made affirmative procedure had been used frequently to introduce new public health protection regulations:

” We know that, during the pandemic, the made affirmative procedure has been used with unprecedented frequency in Scotland and at least sometimes in situations in which it has not at all been clear that there was an urgent need for it and no other mode—a more scrutiny-heavy mode—of making the secondary legislation was possible. The question is whether there is anything that can be done to up the threshold of urgency, such as requiring a ministerial statement to explain why it is considered that the approach is urgently required rather than using the affirmative procedure.<sup>49</sup>

45. When asked to comment on how the Bill could be amended to reduce the reliance on the made affirmative procedure, Professor de Londras noted:

” There are two pathways: one is to change the threshold by which the made affirmative procedure can be used, which, at present, is the Scottish ministers’ determination of urgency. It strikes me as not necessarily very desirable to change that because, of course, the MAP [made affirmative procedure] is designed to enable lawmaking in a situation of urgency.

If you leave the threshold as it is, the other pathway is the procedure. Although, in some ways, it would appear rather weak or proceduralised, the thing to do would be to require justification of the claim of urgency through a ministerial statement or otherwise. You have to find the right balance, so you cannot overproceduralise or overbureaucratise the process, because it is about being able to respond quickly. However, it would be useful to require a statement to the Parliament to justify the use of the MAP, so that its use can be challenged.

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46. The Committee considered the use of the made affirmative procedure in its scrutiny of the Coronavirus (Discretionary Compensation for Self-isolation) (Scotland) Bill.

The Committee recommended that the Scottish Government bring forward an amendment at Stage 2 to require that a statement of reasons is produced to explain why it is necessary to make the regulations urgently.<sup>51</sup> The Scottish Government accepted this recommendation and lodged relevant amendments at Stage 2.

47. The Bill contains 5 delegated powers, which can be exercised subject to the made affirmative procedure. The Delegated Powers and Law Reform Committee has considered how Scottish Ministers have made use of the made affirmative procedure during the COVID-19 pandemic in a recent inquiry.<sup>52</sup> The Delegated Powers and Law Reform Committee drew on the findings of its inquiry to make recommendations on the use of the made affirmative procedure in this Bill.<sup>53</sup> These recommendations include amending the Bill to include a requirement on Scottish Ministers to provide a written statement prior to the instrument coming into force. The purpose of the statement would be to provide an explanation and evidence as to why the Scottish Ministers consider the regulations need to be made urgently. The Committee also recommended that Scottish Ministers include an assessment of the impact of the instrument on those affected by it and that statutory instruments made under the powers should be subject to a sunset provision.
48. The Deputy First Minister noted that he welcomed the Delegated Powers and Law Reform Committee's report and was open to the suggestion to amend the Bill, including inserting a requirement to provide a written statement of reasons when the made affirmative procedure is used, stating:
- ” There is scope for us to explore how to satisfy legitimate parliamentary concern on being persuaded of the merits of a particular action by the production of, for example, a statement of urgency to justify actions, as Professor de Londras suggests. I am open to discussing how we can properly address that point.<sup>54</sup>
49. Since the Committee concluded its evidence-taking at Stage 1, the Education, Children and Young People Committee has reported its findings on Part 2 of the Bill. The Education, Children and Young People Committee commented on the provisions that enable the use of the made affirmative procedure in Part 2, recommending that "where primary legislation provides for the made affirmative procedure to be used this should also require a statement to be provided detailing the reasons and justification on each occasion the procedure is used."<sup>55</sup>

50. **The Committee agrees with the recommendations of the Delegated Powers and Law Reform Committee on the provisions that are subject to the made affirmative procedure in the Bill.<sup>56</sup> The Committee recommends that the Scottish Government bring forward amendments at Stage 2 to provide that where a provision is subject to the made affirmative procedure:**
- **Scottish Ministers must provide a written statement prior to the instrument coming into force providing an explanation and evidence as to why Scottish Ministers consider the regulations need to be made urgently when using the made affirmative procedure;**
  - **Scottish Ministers must include an assessment of the impact of the instrument on those affected by it; and**

- **Statutory instruments to be made under the powers are subject to a sunset provision.**

51. **The Committee notes that Scottish Ministers currently have the power to determine whether a situation is urgent. The Committee recommends the Scottish Government considers whether more detail could be set out on the face of the Bill to note the types of scenarios when Scottish Ministers may consider that legislation is required to be made urgently.**

### *Henry VIII powers*

52. New section 86F enables Scottish Ministers to set out further measures in secondary legislation. This includes a new power to modify any enactment by secondary legislation (new Section 86F(2)(d)), which was not contained in the temporary emergency legislation. The ancillary provisions also include a new power to modify any enactment by secondary legislation in Section 45 of the Bill. A power that enables ministers to amend or repeal provisions in an Act of Parliament using secondary legislation are commonly referred to as a "Henry VIII power".<sup>57</sup>
53. The provisions in new Section 86F are comparable to paragraph 5(2) in Schedule 19 of the UK Coronavirus Act 2020 and Section 45F(2) of the Public Health (Control of Disease) Act 1984. The comparable provisions in these UK Acts do not contain a Henry VIII power. Dr Tickell and Professor Britton commented on the inclusion of this power in the Bill, noting:
- ” While powers of this kind have been used by the UK government to adapt the statute book to the United Kingdom’s departure from the European Union, Henry VIII powers are rightly controversial, as they infringe upon the separation of powers, give legislative functions to the executive, and can be imposed with modest opportunities for parliamentary scrutiny, particularly in circumstances when they are used on an emergency basis.<sup>58</sup>
54. The Policy Memorandum to the Bill does not explain the policy rationale for including these provisions in the Bill and attracted some criticism from legal academics. Professor de Londras noted that this power is "extremely broad" and considered that the use of this power should be "...strictly exception[al] and subject to a very high level of justification before being included in legislation."<sup>59</sup> Dr Tickell and Professor Britton noted that the Civil Contingencies Act 2004 empowers ministers to make “emergency regulations”, which include the power to “disapply or modify an enactment or a provision made under or by virtue of an enactment” using emergency powers.<sup>60</sup> They explained that Scottish Ministers have previously distinguished between the type of powers that should be contained in the Public Health etc. (Scotland) Act 2008 versus the Civil Contingencies Act 2004, as follows:

” In passing the Public Health Act in 2008, the Scottish Government contrasted what it characterised as the “wide ranging and powerful” regime of the Civil Contingency Act with its proposals, which it presented as a middle way which “will allow us to fill the existing gap” in public health regulation without resort to the civil contingency powers, which it said “should not be used except under extreme circumstances.”

The power of ministers to modify or disapply primary legislation under the 2004 Act in a state of emergency is one manifestation of these extremely “wide ranging” powers. It is an authority which rightly contributes to the fact that a state of emergency is not something to be exercised, “except under extreme circumstances.”<sup>61</sup>

55. The Committee understands, however, that the Public Health etc. Scotland Act 2008 contains a Henry VIII power in Section 94.<sup>62</sup> This section implements the International Health Regulations 2005 and other international agreements relating to international travel.<sup>63</sup> The Committee sought clarification from the Scottish Government as to whether Scottish Ministers have ever exercised their power using this provision, and, if so, in what circumstances. The Deputy First Minister noted in supplementary written evidence that the power in section 94 was not used during the COVID-19 pandemic and that a similar power is contained in section 100 of the Burial and Cremation (Scotland) Act 2016 for the purpose of protecting public health.<sup>64</sup>
56. The Deputy First Minister also explained that Scottish Ministers consider this power is an important safeguard, which would ensure that public health protection regulations can be implemented effectively and do not contradict existing legislation. Mr Swinney highlighted that primary legislation was amended in response to the COVID-19 pandemic, such as changing the requirements for the payment of compensation for persons asked to self-isolate. These changes were made through emergency primary legislation, however the Deputy First Minister noted that parliament would have a role in scrutinising the use of this power through secondary legislation if required.<sup>65</sup> The Deputy First Minister noted, however, that he remained “...open to considering any recommendations the Committee may wish to make on this matter.”<sup>66</sup>

- 57. The Committee considers that Parliament’s role in a public health emergency is paramount. The Committee notes there are alternative approaches to the inclusion of the Henry VIII powers in the Bill. This includes removing this provision entirely, or delaying its commencement until a public health emergency arises and giving Parliament a role in scrutinising the decision to commence the powers in those circumstances. The Committee did not come to a consensus on this matter, but invites the Scottish Government to give further consideration to this issue.**

## Review of regulations

58. New section 86G sets out relevant procedures for reviewing public health protection regulations. This includes a requirement for Scottish Ministers to review public health protection regulations made under section 86A(1) every three weeks. Where regulations under section 86A(1) enable a special restriction or requirement to be imposed indirectly, i.e. by virtue of a decision taken under the regulations, the regulations must provide for the review of that restriction or requirement at specified intervals by a person named in the regulations. The Bill also provides that where regulations under section 86A(1) enable the imposition of detention or quarantine, the specified intervals for review must be 3 weeks or less, and the regulations must require the detention or quarantine to be reviewed without an application having to be made to the decision-maker who imposed it.
59. The Committee heard from witnesses who had reviewed the use of emergency powers during the COVID-19 pandemic across different legislatures, including Scotland. Anthony Smith of the Westminster Foundation for Democracy, noted that a review by his organisation found that in practice "a very small amount of time is devoted to reviewing the provisions before they are extended".<sup>67</sup> Mr Smith explained that a key finding from the review was that an effective review mechanism "...must be very clear exactly which provisions will be reviewed and what the review mechanism will be".<sup>68</sup>
60. Professor de Londras of the University of Birmingham considered that an effective review process must be "meaningful" to ensure an appropriate balance between executive power and parliamentary oversight is realised. In her view, "the Bill does not provide for meaningful parliamentary involvement in these review processes". She noted that options to strengthen the review process in the Bill may include a requirement that the outcome of reviews be published, or that Scottish Ministers be required to make a statement on the outcome of the review to Parliament. Professor de Londras explained:
- ” Such a statement might for example outline the review, its results, and what changes might be introduced as a result of the review. The lack of a statutory requirement to make such a ministerial statement does not mean that such statements would not necessarily take place, but it does mean that whether Parliament has an opportunity to respond to these reviews may be determined by the relevant minister and the approach they adopt to the review.<sup>69</sup>
61. Professor de Londras also invited the Committee to consider embedding some of the "good practices [that] have been developed by the Scottish Government and Scottish Parliament to enable more effective parliamentary oversight and involvement" during the course of the pandemic.<sup>70</sup> Some of these processes included formal arrangements, such as requirements in the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 for Scottish Ministers to lay a report in the Scottish Parliament after the end of each reporting period.<sup>71</sup> These reports were intended to support parliament's scrutiny role by providing a summary of how the relevant provisions had been used during the reporting period.
62. Other informal practices were adopted during the pandemic, which ensured that Parliament was informed of the outcome of statutory reviews. For example, Scottish Ministers routinely wrote to the Presiding Officer and lead policy committee to report

the outcome of statutory reviews of emergency legislation. Scottish Ministers also delivered routine statements to Parliament on their handling of the pandemic and provided the lead policy committee with draft instruments before they were made into legislation. The Scottish Parliament was also recalled during recess periods to allow Scottish Ministers to be questioned on their handling of the pandemic and to report on the outcome of statutory reviews of the legislation.

63. The Committee explored some of these ideas with the Deputy First Minister when he gave evidence. The Deputy First Minister noted in response that he was open to exploring suggestions for embedding some of the measures that were developed during the pandemic to strengthen parliamentary scrutiny into the Bill.<sup>72</sup> In supplementary written evidence, the Deputy First Minister clarified that the Scottish Government's view is that review requirements should be specified in secondary legislation and not on the face of the Bill, noting:

” ...it is the Government’s strong view that the regulations themselves would be the most appropriate place to set out any review requirements, as this will depend on the type of threat faced and the measures required to respond. As all regulations made under these powers would be subject to scrutiny, proceeding in this way would also ensure a more active Parliamentary role in determining the suitability of review requirements than would be the case if a single review requirement, which cannot be tailored to specific circumstances, is included in this Bill.<sup>73</sup>

64. **The Committee welcomes the requirement for public health protection regulations to be reviewed, as set out in new Section 86G. The Committee considers the Bill could be strengthened by incorporating best practice reporting processes that were contained in the Scottish Coronavirus Acts. The Committee therefore invites the Scottish Government to bring forward an amendment at Stage 2 to provide a reporting process to accompany the use of public health protection regulations on the face of the Bill.**
65. **The Committee also invites the Scottish Government to bring forward an amendment at Stage 2 to require Scottish Ministers to notify Parliament of the outcome of the reviews conducted under new Section 86G, either through the publication of a report, or by a requirement to write to the Presiding Officer and lead policy committee on the outcome of the review. This should include the options considered and the evidence that underpins the decision taken.**

### Other provisions

66. Many of the existing powers in the Public Health etc. (Scotland) 2008 Act require an application to the Sheriff court in order to be applied. However, the Bill does not appear to stipulate a specific process when applying the special restrictions and requirements listed in new Section 86E, including the requirement for:
- a person to submit to medical examination,

- a person be removed to a hospital or other suitable establishment,
  - a person be detained in a hospital or other suitable establishment,
  - a person be kept in quarantine.
67. New Section 86F makes further provision about the types of matters Scottish Ministers can set out in secondary legislation regarding the content of public health protection regulations. This enables Scottish Ministers amongst other matters to create an appeals and review process. Other parts of the Public Health etc. (Scotland) Act 2008, such as Part 4 and Part 5, have set out the appeals process that applies to those parts on the face of the Act, rather than in secondary legislation.
68. The Deputy First Minister explained in supplementary written evidence that "it is the government's view that regulations themselves are the best place to set out full details of the review and appeals process that will attach to imposition of special restrictions." Mr Swinney contrasted the provisions in the Bill with the existing measures in the Public Health etc. Scotland Act 2008, which he explained are intended to deal with smaller outbreaks. The Deputy First Minister explained that the Bill contains measures that are complementary to the 2008 Act, but contain "a different range of safeguards" "in recognition of the speed with which decisions with national implications may have to be taken".<sup>74</sup>

69. **The Committee notes the Scottish Government's explanation as to why Scottish Ministers or other persons are not required to obtain a Sheriff's order when seeking to apply the special restrictions and requirements contained in Section 86E. The Committee nonetheless invites the Scottish Government to give this further consideration, including whether to bring forward an amendment at Stage 2 to clarify the process that will be applied when these measures are implemented.**
70. **The Committee also notes that other parts of the Public Health etc. (Scotland) Act 2008 contain an appeals process on the face of the primary legislation. The Committee therefore invites the Scottish Government to consider bringing forward an amendment at Stage 2 to set out a requirement that an appeals process is provided for in secondary legislation when the provisions in the new Part 5A are implemented.**

## Arrangements for vaccination and immunisation

71. Section 4 of the Bill amends section 40 of the National Health Service (Scotland) Act 1978 to permanently remove the requirement for vaccinations and immunisations to be delivered only under the direction and control of a medical practitioner<sup>75</sup>. This requirement was temporarily removed by section 36 of the UK Coronavirus Act 2020.
72. The Policy Memorandum explains that removing this requirement would bring



Scotland into line with other parts of the UK. Scottish Ministers also wish to retain this flexibility to support the delivery of vaccination and immunisation programmes at a large scale in the future, such as an expanded seasonal influenza programme and the COVID-19 booster programme.<sup>76</sup> The Scottish Government also considers that this flexibility will allow general practitioners to focus on other healthcare services, which only they can deliver.<sup>77</sup>

73. Some members of the public who responded to the Committee's call for views expressed views about vaccination and immunisation more generally, noting their concerns that the COVID-19 vaccines were not safe or effective;<sup>78</sup> and that participating in vaccination and immunisation programmes should remain voluntary.<sup>79</sup> Other respondents, such as the Alliance, welcomed this provision being made permanent, noting that it had enabled resources to be used effectively during the pandemic and that these measures "should not be confined to public health emergencies..."<sup>80</sup> The Alliance also recommended that this provision should be accompanied by a public health information campaign:

” ...measures should be taken to maintain public trust and confidence and ensure that people's safety is prioritised. The Scottish Government should reiterate that all healthcare professions are subject to the regulatory standards under which they were approved to deliver the care and support they trained and qualified for. This message should be reiterated in clear, accessible and informative guidance to all people with long term conditions, disabled people and unpaid carers in public guidance.<sup>81</sup>

74. **The Committee agrees with the Bill's policy intent to permanently remove the requirement for vaccinations and immunisations to be delivered only under the direction and control of a medical practitioner.**
75. **The Committee considers that the implementation of this provision should continue to be accompanied by accessible public health messaging aimed at supporting public confidence in the future delivery of programmes. This should highlight the safety measures that have been built into vaccination and immunisation programmes, including the development of vaccines and the training and regulation of persons administering doses.**

## Part 3: Public service reform

76. Part 3 of the Bill contains a range of measures grouped under the heading "Public service reform". The Committee's focus was on the non-justice related provisions in this part of the Bill. It undertook a thematic approach to scrutinising the provisions that are related to the remote delivery of public services. The Committee considered the provisions related to bankruptcy (threshold and moratorium on diligence) and mental health separately, as outlined in the following sections of this report.

### Remote delivery of public services

77. The Committee was particularly interested in the remote delivery of public services and issues around digital exclusion. These issues are relevant to a number of provisions contained in Part 3 of the Bill, including:

- Bankruptcy (sections 15-17)
- Registration of births and deaths (sections 18-20)
- Licensing (sections 21-23)
- Land Registration (sections 24-25)
- Freedom of Information (section 27)
- Care services (section 29)

These provisions cover both the electronic delivery of documents and the option to hold online meetings and hearings. Further detail on these provisions are explained in the Policy Memorandum and Explanatory Notes accompanying the Bill.

78. The Policy Memorandum highlighted that the emergency legislation contained practical measures to help with the delivery of public services throughout the pandemic and the Bill aims to capture good practice in relation to the use of technology and improving existing digital services in the provisions highlighted above. It stated:

” The Covid pandemic has shone an intense spotlight on the importance of public services which are not only secure, resilient and accessible to all, but which are also able to work across organisational boundaries, adapt and scale in response to changing demands. It has increased the pace of digital adoption and innovation, as organisations and businesses in every sector of the economy have had to, almost overnight, become digital organisations. <sup>82</sup>

### Experience of remote service provision

79. Whilst noting these positive outcomes, the Committee was keen to understand the very real risks associated with the fact that not all parts of the Scottish population have equal access to, and capacity to use, the technology associated with digital delivery of public services. The Committee heard of the experiences of delivering public services remotely throughout the pandemic under the emergency legislation,

including increased flexibilities and resource savings, however witnesses highlighted some of the barriers to accessibility which exist for some users of remote public services.

80. Emergency legislation enabled the remote registration of deaths and still births and this Bill includes proposals to extend remote registration to also include live births. On their experience of remote registration services, Douglas Hendry, representing Argyll and Bute Council, informed the Committee that the Council had carried out customer satisfaction surveys, which showed a majority of death registration service users were in favour of the process being done remotely and found it less stressful. He indicated that the Council has no reservations about extending the remote registration services to live births.<sup>83</sup>
81. Fiona Blair, representing the Association of Registrars of Scotland, also spoke of the benefits of remote death registration, particularly for those in remote and rural areas. She said that this reduced the need to travel long distances and was the correct approach to introduce remote registration of live births. However, she also told the Committee that there are occasions when it will be beneficial to provide in person registration services and that local authorities should offer that service. She said:
- ” People who are vulnerable or have disabilities and need in-person registration should never be denied it.<sup>84</sup>
82. Ms Blair also said that in her experience it had been mainly older people who had been digitally excluded from remote registration services during the pandemic, particularly in relation to access to email, and that on those occasions documents had to be posted out. She commented that under the Bill provisions, registration offices would be able to offer customers the choice of a remote registration or an in-person registration. She went on to say:
- ” The bill will not take in-person registration away, because that is important. As the bill is drafted, in-person registration does not need to be guaranteed in prescribed circumstances; it should be offered as a choice to people.<sup>85</sup>
83. On licensing services, Mairi Miller, representing Glasgow City Council, explained that having more general meetings online has allowed people to engage with meetings that they might not have been able to previously. She said that there should also be the capability to hold hybrid meetings, which would allow people who might not have chosen to engage in the proceedings in the past to do so, for example people who object to licence applications. Ms Miller also highlighted that licence applications often involve a number of people who do not have English as a first language, which can cause problems with some of the Council's online systems. She suggested there was a "need for services to take a more hybrid approach in recognition of those people who are not able to engage exclusively with online services."<sup>86</sup>
84. Adam Stachura, representing Age Scotland, pointed out that we often do not hear from the people who have not been successful at communicating digitally and warned the Committee that "If councils' phone lines and face-to-face services are shut down, we will not hear from those people. That is part of the future."<sup>87</sup>

85. In relation to the electronic delivery of bankruptcy documents , Abbey Fleming, representing Money Advice Scotland (MAS), argued it was important that the Bill builds in a safeguard whereby the recipient must have indicated in advance to the sender that they are willing to receive the documents and notifications in a particular way.<sup>88</sup> These safeguards already appear in the Bill. However, Jamie MacNeil, representing South Lanarkshire Council, expressed concerns regarding the potential for someone to agree to electronic communication of bankruptcy documents then, as a result of ongoing debt problems, subsequently no longer have access to electronic communication.<sup>89</sup>
86. David Menzies, representing the Institute of Chartered Accounts of Scotland (ICAS), highlighted that it is primarily professionals such as money advisers, insolvency practitioners and creditors who communicate in bankruptcy and that they prefer electronic means of communication. He suggested that the Bill could draw a distinction between communications with creditors and communications with debtors.<sup>90</sup>
87. Professor Donna W McKenzie Skene agreed with ICAS that there was broad consensus that changes such as electronic service of bankruptcy documents and provision for remote meetings of creditors were welcome improvements.<sup>91</sup>
88. When asked if the Bill should draw a distinction between communications with creditors and communications with debtors as suggested by ICAS, the Deputy First Minister acknowledged the need to ensure there are alternative arrangements in place for those people who cannot access public services remotely. He said:
- ” Although the digital approach suits many people, we must ensure that all individuals can access services accordingly.<sup>92</sup>
89. In relation to the new provision for registration of live births, the Committee asked the Deputy First Minister how the balance will be struck between continuing in-person services and encouraging remote registration. Mr Swinney replied that this should be a matter of choice and told the Committee:
- ” The best way to approach that is by providing the options that enable us to better meet all individuals’ needs in recognition that those might differ from individual to individual.<sup>93</sup>
90. When pressed on whether the Bill as currently drafted ensures that local authorities must offer the choice of remote or in person service, the Deputy First Minister replied—
- ” Yes, that is the case. However, members might wish to come back to the point to provide a degree of further legislative constraint if the bill is not felt to be sufficiently strong on that.<sup>94</sup>
91. Mr Swinney went on to say, " If the bill does not have adequate safeguards in that regard, we should be prepared to consider that."<sup>95</sup>

**92. The Committee notes the support for the remote delivery of public services**

and the flexibilities and efficiencies the provisions in the Bill will bring. The Committee welcomes these provisions, which will build on good practice in service provision experienced during the pandemic.

93. However, the Committee is aware that not everyone will be able to access services remotely and believes that it is essential that the Bill ensures that local authorities provide a choice of remote or in person service where required. The Committee welcomes the Deputy First Minister's willingness to look at this and recommends that Scottish Government brings forward an amendment at Stage 2 to ensure the Bill requires local authorities to offer the choice of remote or in person service where required.
94. In relation to the bankruptcy provisions, the Committee agrees that there should be distinction drawn between electronic communications with creditors and communications with debtors. The Committee recommends that the Scottish Government brings forward amendments at Stage 2 to allow for different consent processes to apply for electronic communications with creditors and electronic communications with debtors.

## Discretion on the format of meetings

95. The bankruptcy provisions allow meetings of creditors to take place remotely and the SPICe briefing on the Bill explains that it would be up to the person responsible for calling the meeting to decide what was most convenient to the majority of creditors.<sup>96</sup> The Policy Memorandum noted that this was introduced as a temporary measure during the pandemic due to physical distancing rules and stated:

” The temporary reform has led to greater efficiency in process and there is now broad consensus that this measure should be introduced on a permanent basis. The measure has proved to be a sensible modernising change to bankruptcy administration.<sup>97</sup>

96. The licensing provisions also allow for civic and alcohol licensing meetings and hearings to be held remotely and the Bill as drafted gives the licensing authority and local authority control over how hearings should be held. The Policy Memorandum stated that:

” The Scottish Government wishes licensing authorities to have the flexibility to exercise their discretion to be able to hold remote hearings where they consider it appropriate.<sup>98</sup>

97. Mairi Millar said her experience of online licensing meetings had generally been positive but that the Council would not choose to hold meetings exclusively online in future rather, move towards hybrid meetings where people are able to join meetings remotely. She spoke of the benefits of in person meetings as “in an online meeting, they lose some of the nuance of facial expressions and other indicators of where their submissions are going”.<sup>99</sup> She also said that giving local authorities the

choice regarding the best format of meetings was an important development but that such decisions should be made following engagement with stakeholders. Douglas Hendry also agreed that it was appropriate for councils to have discretion on the format of licence hearings.<sup>100</sup>

98. However concerns were raised regarding the implications of the option to provide remote services for licence applicants with local authorities having sole discretion in deciding the best format. In emergency legislation, where a meeting was to be held remotely, applicants and objectors were given the right to decide how they wanted to participate. For example, Adam Stachura expressed concern about the discretion afforded to local authorities in the Bill and whether this would set a precedent for moving more services online or being primarily accessed online in future. He argued that "people should and must have the option of a non-digital route."<sup>101</sup>

99. It was suggested that, instead of giving licensing authorities complete discretion to decide the format of meetings, that the Bill should be amended to give those entitled to participate in hearings more of a say. When asked if the Bill should contain a requirement that local authorities offer the choice of in person services, Mairi Miller replied:

” That is a difficult point, because of the differences across local authorities. It is important that local authorities retain discretion but, in deciding what the best format is, there should be an obligation to fully engage with various stakeholders, whether through a formal consultation or through more informal processes.<sup>102</sup>

100. The Deputy First Minister noted he would be willing to consider amending the Bill to allow those entitled to participate in licensing meetings and hearings to have a say on the format of those meetings, rather than it being at the sole discretion of the local authority, stating:

” An important point to add is that it is the responsibility of licensing boards and authorities to ensure that virtual meetings and hearings are conducted in a manner that meets the accessibility and engagement requirements of attendees. Therefore, the onus is on the body to make sure that its approach can meet the needs of the licence applicant. However, if there is a need for us to make that more explicit, I am happy to consider that.<sup>103</sup>

**101. The Committee notes the concerns regarding the discretion afforded to local authorities in deciding the format of licence hearings and meetings. The Committee welcomes the Deputy First Minister's willingness to look again at these provisions.**

**102. The Committee recommends that the Scottish Government brings forward amendments at Stage 2 to make it explicit that those entitled to participate in licence meetings and hearings are also involved in the process of decision-making on the format of meetings.**

## Remote services development support

103. The Committee considered the support which will be required for the successful development and delivery of remote delivery of public services which also addresses the digital exclusion issues as described by witnesses.
104. The Committee heard from local authority witnesses that online delivery of services had had to happen “at speed” at the beginning of the pandemic. Mairi Millar accepted that a lot more could now be done to re-configure those services to make them more accessible to people who may be digitally – or otherwise – excluded. She told the Committee:
- ” A considerable piece of work has still to be done to make the online capability for application forms and other processes much more accessible, and a significant resource will be required to do that. <sup>104</sup>
105. Adam Stachura informed the Committee that in the most deprived parts of Scotland, 50 per cent of older people do not use the internet and it is important to remember that not everyone in Scotland can get online due to a number of factors such as poverty or certain health conditions. For those who are online, he also highlighted the complexities involved:
- ” Some of the platforms used by local authorities, the NHS and general practices can be hard to navigate to, and just because someone can get there does not mean that they can find what they are looking for or do what they were intending to do. <sup>105</sup>
106. David McNeill, representing SCVO said there were three components which need to be considered in the development of the remote delivery of public services to address digital exclusion namely, confidence to go online; access to devices and internet connections; and online skills and ability. <sup>106</sup> He told the Committee that support must be offered to users who are not confident in using remote services and said “People who cannot engage with services online must not be passed on to, for example, libraries or some other service.” <sup>107</sup>
107. Mr McNeill also stressed that, despite the fact that the majority of people will prefer to use online public services, it is important to offer a choice of service to users not just have an online option.
108. Douglas Hendry raised the issue of poor broadband connections in some rural and remote areas and the impact this had on people’s ability to access online public services. He argued for the need for more work to be done with service providers to increase the roll-out of broadband in remote and rural areas. <sup>108</sup>
109. Duncan McNeill highlighted the work undertaken between council services and the third sector in delivering remote public services. He gave the example of the work being done by Renfrewshire Council in establishing a strong partnership with the local third sector interface, housing associations and others, to discuss how they collectively address digital exclusion issues in their development of digital services. He also highlighted the use of a Digital Champion Co-ordinator whose role is to help people access additional support available in the local authority and to share resources. He said:

” We have been working closely with that partnership in Renfrewshire to look at place-based approaches and how to support people. It is about developing the service in tandem with digital exclusion support, with the third sector and the public sector working together—and, indeed, the private sector in terms of connectivity.<sup>109</sup>

110. Douglas Hendry also agreed that a joined-up approach was required for the successful delivery of online public services.

111. The Deputy First Minister accepted there was still work to be done in adapting public services to allow them to provide services remotely, noting:

” Ministers have been clear that we are too far behind the private sector on developments in that regard. The private sector is significantly ahead of the public sector in relation to the availability of such provision.<sup>110</sup>

112. The Deputy First Minister confirmed that funding was available to support the adaptation of public services. When asked if funding will be available specifically to address digital exclusion, Mr Swinney said the connected communities initiative was making significant progress in this area and that funding was available.

**113. Given the evidence heard in relation to digital exclusion, the Committee recommends the Scottish Government brings forward amendments at Stage 2 making it a requirement for local authorities to retain the option of in-person services, including the provision of hard copy documents and in-person meetings, where this is required.**

**114. The Committee is concerned that some people for various reasons, such as digital exclusion, may not be able to access services remotely and is of the view this must be addressed as a priority. The Committee welcomes the acknowledgement from the Deputy First Minister that more work needs to be done to address digital exclusion and requests that the Scottish Government provides further information on the specific funding streams that are available to support this work.**

**115. In addition, the Committee believes there should be a recognition that greater support will be needed at community level to help support users moving to online public service provision. The Committee requests the Scottish Government sets out how it plans to work with local authorities and the third sector to ensure sufficient and appropriate support is available to users of online services, particularly those who are digitally excluded, to ensure everyone has continued access to the public services they require.**

## Bankruptcy

116. The Committee also considered the bankruptcy threshold provision in the Bill and the issue of the moratorium on diligence. As highlighted in the Policy Memorandum,



there is currently a wider review on statutory debt solutions being undertaken by the Accountant in Bankruptcy, which includes a number of stakeholder-led working groups on specific strands of this work. <sup>111</sup>

## Bankruptcy threshold

117. People can only be forced into bankruptcy by their creditors if they owe above a certain amount of money. Emergency coronavirus legislation increased the debt threshold at which a creditor can make someone bankrupt from £3,000 to £10,000. The Bill proposes to set it permanently at £5,000. This threshold was extended from £3,000 to £10,000 to protect people from harsh outcomes during the pandemic. However, it impacts on the ability of creditors – especially smaller creditors – ability to enforce debts.
118. There were mixed views on the appropriate ongoing level for the threshold in the Scottish Government consultation on the Bill. <sup>112</sup> Some argued that £10,000 was still appropriate as the financial effects of the pandemic were likely to carry on for some time and people in debt needed extra protection. Others argued that £5,000 was a more appropriate long-term balance between the interests of creditors and people in debt – and could act as a trigger for people to address their debt problems earlier.
119. In their response to the Committee, MAS suggested that £5,000 may not be enough to provide adequate protection to people in debt. They noted that the financial effects of the pandemic were being exacerbated by rising living costs creating ongoing problems for people trying to manage their finances. <sup>113</sup> During evidence they suggested a figure of £6,000 to £7,000 would perhaps be more appropriate. <sup>114</sup> This point was echoed by South Lanarkshire Council who argued the threshold should be permanently set at £10,000. <sup>115</sup>
120. David Menzies informed the Committee that around 2 to 4 per cent of bankruptcies are those where creditors initiate that step and thus this threshold applies. He added that most of these bankruptcies are made by local authorities in relation to council tax debt, and by Her Majesty's Revenue and Customs. <sup>116</sup>
121. Professor McKenzie Skene argued that setting the threshold level was a question of balance between the rights of creditors with the rights of debtors. In supplementary written evidence, she highlighted that around 60% of creditor petitions were presented by public bodies (including local authorities) and that this raised the issue of "recovery of funds due to the public purse". <sup>117</sup>
122. Professor McKenzie Skene also confirmed she was Chair of the working group <sup>118</sup> looking at the threshold level and the provisions in the Bill are consistent with the recommendations of that working group. She highlighted statistics which were provided to the working group which showed that increasing the creditor petition limit to £5,000 would have precluded around 15% of creditor petitions while retaining it at £10,000 would have precluded around 47% of creditor petitions. She told the Committee:

” Looking at the statistics again, a figure of £7,000 (which was one of the alternative figures suggested by other witnesses) would have precluded, if my calculations are correct, around another 15% of creditor petitions over and above that which would have been precluded with a limit of £5,000. In my view, this is shifting the balance too far. <sup>119</sup>

123. She also explained that the working group's recommendations were finalised before the extent of the current cost of living crisis became apparent however she still supports its recommendation in relation to the threshold. She said:

” As was noted by other witnesses, the issue is essentially one of balance. Of course, there will be different views as to where the correct balance is to be struck, but anything which tilts the balance too far in either direction may very well have detrimental consequences for the cohort sought to be assisted by the changes, and in my view, the bill strikes the right balance here. <sup>120</sup>

124. The Committee asked the Deputy First Minister whether the Scottish Government is considering increasing the threshold as set out in the Bill given the emerging cost of living crisis. Mr Swinney said the Scottish Government believed £5,000 to be a reasonable threshold but acknowledged the challenges regarding the cost of living crisis.

**125. The Committee notes the mixed views on the threshold for the minimum debt level a creditor must be owed to petition the court for bankruptcy of a debtor. The Committee acknowledges that this threshold must be set at level which ensures a balance between the needs of debtors and the needs of creditors.**

**126. The Committee notes the working group looking at the threshold level is content with the level set in the Bill. The Committee also notes the Chair of the working group still supported the threshold level as set out in the Bill, despite the cost of living crisis not being apparent at the time of their recommendation.**

**127. The Committee considers the threshold limit of £5,000 as set out in the Bill is reasonable. However the Committee notes that the cost of living crisis has escalated considerably since the Bill was introduced. For this reason, the Committee recommends that the Scottish Government set out in further detail the assessment they have made as to why this remains the right balance.**

## Moratorium on diligence

128. A moratorium on diligence is a legally enforceable pause on creditors taking action to recover their debts while the person in debt seeks money advice. Emergency legislation extended the moratorium from six weeks to six months.

129. The intention of the moratorium extension was to give people with debt problems

extensive protection from creditor action during the pandemic recognising the likelihood of increased debt problems as well as difficulties accessing money advice as services closed face-to-face provision. However, this protection for debtors has an impact on the rights of creditors – including small creditors like credit unions – to pursue debts owed to them.

130. The Scottish Government consulted on the moratorium on and suggested six weeks, 12 weeks and six months as permanent options. There was no clear overall preference from consultation respondents.<sup>121</sup> The Policy Memorandum said that further targeted consultation would be undertaken "to ensure the option chosen achieves the right balance between the interests of creditors and debtors" and, subject to the outcome of that targeted consultation, it is anticipated that a provision on the moratorium period will be brought forward at Stage 2.<sup>122</sup>

131. During evidence, South Lanarkshire Council expressed concern that having a permanent moratorium at six months could result in people disengaging with the process and suggested that a further consultation should be undertaken on whether it should be 12 weeks.<sup>123</sup> This point was echoed by MAS who added that it should be no shorter than 12 weeks.<sup>124</sup> Jamie McNeil told the Committee:

” Six months might seem to be excessive in some cases, but the average bankruptcy or debt arrangement scheme that we do probably takes 12 weeks to arrange—if everything goes to plan, by which I mean the client being able to provide all the information that is required because they are statutory solutions. We suggest extending the six-month moratorium until September, which is allowable. After that point, a review should be done and 12 weeks could be considered.<sup>125</sup>

132. Both MAS and ICAS informed the Committee that they were on the working group currently looking at the moratorium. ICAS said that currently there was no consensus as to what the period should be and that the report from the working group is due to be published shortly.

133. Professor McKenzie Skene said that whilst she was of the view that any decision on this should take into account the working group's review, her preference was for it to be 12 weeks. She stated:

” ..there seems to be a broad consensus that reverting to the prepandemic position is not appropriate as 6 weeks is too short, but also that the emergency provision of 6 months is too long. I have previously expressed a view that 12 weeks would seem to be a reasonable compromise, and I remain of that view.<sup>126</sup>

134. The Deputy First Minister confirmed he was aware of the differing views on the appropriate moratorium period and confirmed that the Scottish Government is currently in the processes of weighing these up with a view to lodging appropriate amendments to the Bill at Stage 2.

**135. The Committee welcomes the Scottish Government's intention to bring forward amendments at Stage 2 on the moratorium on diligence and notes**

**the evidence which suggests this period should be no less than 12 weeks. The Committee recommends that, in bringing forward any Stage 2 amendments, the Scottish Government should take into account the views of the working group currently looking at this issue.**

## Mental health

136. Section 28 of the Bill amends section 250(2A) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"). The effect of this change is to remove a requirement for a named person's signature to be witnessed by a "prescribed person". This requirement was originally introduced by the Mental Health (Scotland) Act 2015 ("the 2015 Act") and was temporarily removed by paragraph 15 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020.<sup>127</sup>
137. Named persons can support people who are subject to the compulsory powers under the 2003 Act, including in situations where they may be subject to a compulsory treatment order or detention in hospital.<sup>128</sup> A named person acquires rights in these situations, such as the right to apply and appeal to the Mental Health Tribunal for Scotland ("MHTS") and to appear and be represented at MHTS hearings, including about the person's care and treatment. The named person is also entitled to be given information concerning any compulsory measures which have been taken or are being asked for, where this is provided for by the 2003 Act.<sup>129</sup>
138. The procedure for appointing a named person was amended by the 2015 Act. Prior to the 2015 Act, if a person did not choose a named person, then a carer or nearest relative could become a named person by default.<sup>130</sup> This provision was removed by the 2015 Act (except in relation to individuals under the age of 16) because Scottish Ministers considered that "...an individual should only have a named person if they chose to have one".<sup>131</sup> A new provision was inserted into the 2015 Act to require a signature by the nominated person and for their signature to be witnessed by an individual from a set list of professions (known as "prescribed persons").<sup>132</sup> The Policy Memorandum to the Mental Health (Scotland) Bill as introduced explained the policy intent behind this change:
- ” The rationale for this is that this will enable the named person to discuss matters with the individual and obtain information about the role and responsibilities of a named person prior to their accepting the nomination.<sup>133</sup>
139. Dr Roger Smyth, Chair of the Legislative Oversight Forum of the Royal College of Psychiatrists in Scotland, explained the different considerations that inform the process of appointing a named person when he gave evidence to the Committee:

- ” There is a balance to be struck here between, on the one hand, upholding the rights of individuals to have a named person of their choice and for as many people who want a named person to be able to identify and notarise them and, on the other, ensuring that people are not placed in the position of becoming a named person unwillingly, unknowingly or without proper scrutiny of the roles that they would be expected to undertake. The 2015 Act moved the balance a little bit more in favour of protecting those who might be unwillingly nominated, and this small tweak to the procedure will make things slightly simpler and more straightforward and move the balance back to making it fractionally easier for an individual to obtain a correctly nominated named person. <sup>134</sup>
140. The Policy Memorandum to the Coronavirus (Recovery and Reform) (Scotland) Bill explains that the requirement for the named person's signature to be witnessed has "added no new safeguard for patients", <sup>135</sup> and removing it permanently is intended to "reduce any delays in having the patient involved in their care and treatment decisions". <sup>136</sup> The Committee was informed that because a limited range of professionals qualify as a "prescribed person", this requirement may have had the unintended consequence of creating barriers to the appointment of a named person, particularly when public health protection measures are in place. <sup>137</sup> Dr Arun Chopra, Medical Director, for the Mental Welfare Commission, informed the Committee that the Commission had monitored the impact of temporarily removing this requirement and found that it had no material impact on the number of people who have appointed a named person over the relevant period. <sup>138</sup>
141. The Scottish Association of Social Work ("SASW") nevertheless highlighted concerns to the Committee that removing the requirement to witness the signature of a nominated named person might impact negatively on their understanding of the role:
- ” The requirement for a witnessed signature in the case of an individual agreeing to become a named person is an important safeguarding measure. It not only acts as a way to verify the named person but is also an opportunity to inform them of the role, allow them to ask any questions, ensure they have an understanding of the responsibilities and to confirm that they are competent and able to perform the functions correctly. This is particularly important since there is little guidance around the role and responsibilities of a named person. <sup>139</sup>
142. The Mental Welfare Commission informed the Committee that "The multidisciplinary team, the mental health officer and others will discuss the matter with the named person and ask whether they understand what is involved." <sup>140</sup> Dr Smyth also explained that there should be an ongoing process to support and inform the nominated named person about their role, rather than this being concluded in a single conversation:

” It must be a process rather than an event because, if the legislation works as it should, someone would nominate a named person when they were well, and when the prospect of future illness and future treatment under the legislation were at least theoretical and in the future. It is only when those events happen that the reality would be brought to bear. It would be inappropriate to consider that the information that the named person received about their role and responsibilities, and particularly their rights, should be contained within the time of meeting the witness that occurred perhaps a year or more in the past. <sup>141</sup>

143. Notwithstanding these comments, both Dr Chopra and Dr Smyth agreed when questioned that adding a requirement for the nominated named person to declare that they understand their role, rights and responsibilities when accepting the nomination in writing may address the SASW's concerns. <sup>142</sup> Dr Chopra commented that this proposal could act "as an additional check for the named person to say that they need a bit more information or that they have read the guidance." <sup>143</sup>

144. The Committee was concerned to learn more broadly that relatively few people are exercising their right to appoint a named person. Dr Chopra informed the Committee that the Mental Welfare Commission has reviewed the uptake of this safeguard and found that "...over the three-year period [2018-2020], only around 25 per cent of people who have been detained have a named person." Dr Chopra further clarified these figures, noting that:

” We have found that, when people are first detained under a short-term detention certificate for up to 28 days under the 2003 Act, only 11 per cent of them have a named person. The figure for those subject to compulsory treatment orders who have a named person reaches around 25 per cent. <sup>144</sup>

The Committee was informed that the low incidence of people exercising this right was also raised as a concern when the legislation was last updated in 2015. <sup>145</sup> Dr Chopra concluded that "we all need to do better at ensuring that people or patients who are likely to be detained have a named person", <sup>146</sup> having explained earlier in the evidence session that more could be done to make individuals aware of this important safeguard:

” ...it is quite clear from the data that, even before the pandemic, there was not the uptake that one might have expected for a safeguard of such importance. That relates, I think, to knowledge of the safeguard and the need to ensure that people are aware of its existence and to reduce any barriers that there might be as a result of the pandemic—and which there might have been beforehand—to the uptake by individuals of the named person provision. <sup>147</sup>

145. The Committee asked the Deputy First Minister about the protections in place to ensure that a nominated person understands their role and responsibilities. The Deputy First Minister noted that there is a statutory code of practice to help people to understand the role of a named person. Mr Swinney explained that according to the code of practice, it "would be best for" the mental health officer or any other practitioner to discuss the matter with the nominee to ensure that they are provided with information about the role of a named person "in a form which is helpful to

them”.<sup>148</sup>

146. **The Committee recommends that the Scottish Government bring forward an amendment at Stage 2 to require that nominated named persons are provided with guidance on their role, rights and responsibilities in writing before they accept their nomination.**
147. **The Committee also recommends that the Scottish Government bring forward an amendment at Stage 2 to require a nominated named person to declare that they understand their role, rights and responsibilities when they accept their nomination in writing.**
148. **The Committee is also concerned that relatively few people are exercising their right to appoint a named person under the 2003 Act as amended. It therefore encourages the Scottish Government to work with the Mental Welfare Commission to consider what more can be done to promote this important safeguard and increase its uptake.**

# Conclusion

149. The non-justice related provisions in Part 3 of the Bill will embed measures that are intended to make our public services more resilient to future public health threats. The Committee supports the Bill's provisions related to vaccination and immunisation; bankruptcy; mental health; and the delivery of public services through electronic means. The Committee has highlighted some areas where we consider the Bill could be strengthened and we welcome the Scottish Government giving these matters further consideration.
150. This Bill also provides Scottish Ministers with powers to make regulations for the purpose of public health protection. The Committee notes that these provisions (Chapter 1, Part 1) will bring Scotland into line with comparative public health legislation in England and Wales and the International Health Regulations 2005. Some members<sup>iv</sup> of the Committee agree with the general purpose of these provisions to enable Scottish Ministers to coordinate a national response to future public health threats. Other members<sup>v</sup> of the Committee consider that the Scottish Government has not made a sufficient case for why the powers should be made permanent and instead consider that these powers could be brought forward quickly under primary legislation if required in future.
151. The Committee's first-hand experience of a public health emergency has informed its scrutiny of these provisions. The Committee has witnessed both the challenge for Scottish Ministers in responding to an emerging and evolving public health threat, as well as the challenge for Parliament in holding Scottish Ministers to account.
152. In light of this experience, the Committee considers that the Bill could be strengthened to ensure that Parliament's ability to hold Scottish Ministers to account in a public health emergency is sufficiently robust. The Committee supports the Delegated Powers and Law Reform Committee's recommendations in relation to the use of the made affirmative procedure in the Bill. The Committee considers that Parliament's role in a public health emergency is paramount. The Committee notes there are alternative approaches to the inclusion of the Henry VIII powers in the Bill. This includes removing this provision entirely, or delaying its commencement until a public health emergency arises and giving Parliament a role in scrutinising the decision to commence the powers in those circumstances. The Committee did not come to a consensus on this matter.
153. The Committee welcomes the Scottish Government's willingness to consider these issues further and on this basis the Committee recommends to the Parliament that the Bill's general principles be agreed

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iv Siobhian Brown, Jim Fairlie and John Mason.

v Murdo Fraser, Alex Rowley and Brian Whittle.



**to on a casting vote. <sup>vi</sup>**

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**<sup>vi</sup> The Committee agreed (by division: For: 3 (Siobhian Brown, Jim Fairlie and John Mason), Against: 3 (Murdo Fraser, Alex Rowley and Brian Whittle), Abstentions: 0) to recommend to the Parliament that the general principles of the Bill be agreed to on a casting vote.**

# Annexe A

## Extracts from the minutes of the COVID-19 Recovery Committee and associated written and supplementary evidence

### 5th Meeting, Thursday 10 February 2022

1. **Work programme (private):** The Committee considered its work programme.

### 7th Meeting, Thursday 3 March 2022

1. **Coronavirus (Recovery and Reform) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Professor Fiona de Londras, Professor of Global Legal Studies, COVID Review Observatory, University of Birmingham
- Professor Paul Hunter, Professor in Medicine, Norwich Medical School, University of East Anglia
- Anthony Smith, Chief Executive, Westminster Foundation for Democracy

and then from—

- Abbey Fleming, Policy and Communications Lead, Money Advice Scotland
- Jamie MacNeil, Money Matters Advice Service, Social Work Resources, South Lanarkshire Council
- Emerita Professor Donna W McKenzie Skene, School of Law, University of Aberdeen
- David Menzies, Director of Practice, Institute of Chartered Accountants of Scotland

John Mason declared that he is a member of ICAS.

2. **Consideration of evidence (private):** The Committee considered the evidence heard earlier in the meeting.

#### Written evidence:

- [Emerita Professor Donna W McKenzie Skene](#)
- [Professor Fiona de Londras, Professor of Global Legal Studies, COVID Review Observatory, University of Birmingham](#)
- [Institute of Chartered Accountants of Scotland](#)
- [Money Advice Scotland \(Response ID: 254187107\)](#)

- [Money Advice Scotland \(Response ID: 980163137\)](#)

## 8th Meeting, Thursday 10 March 2022

**2. Coronavirus (Recovery and Reform) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Dr Arun Chopra, Medical Director, Mental Welfare Commission Scotland
- Dr Roger Smyth, Chair, Legislative Oversight Forum, Royal College of Psychiatrists in Scotland

**3. Consideration of evidence (private):** The Committee considered the evidence heard earlier in the meeting.

### Written evidence:

- [Mental Welfare Commission for Scotland](#)
- [Royal College of Psychiatrists in Scotland](#)

## 10th Meeting, Thursday 24 March 2022

**1. Coronavirus (Recovery and Reform) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Adam Stachura, Head of Policy and Communications, Age Scotland;
- Douglas Hendry, Executive Director, Argyll and Bute Council ;
- Fiona Blair, President, Association of Registrars of Scotland;
- Mairi Millar, Head of Licensing and Democratic Services, Glasgow City Council;
- David McNeill, Director of Development, Scottish Council for Voluntary Organisations (SCVO).

**2. Consideration of evidence (private):** The Committee considered the evidence heard earlier in the meeting.

### Written evidence:

- [Association of Registrars of Scotland](#)

## 11th Meeting, Thursday 31 March 2022

**1. Coronavirus (Recovery and Reform) (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- John Swinney, Deputy First Minister and Cabinet Secretary for COVID Recovery,

- Greig Walker, Coronavirus (Recovery and Reform) Bill Team Leader,
- Professor Jason Leitch, National Clinical Director,
- Laura McGlynn, Head of Health Protection and Screening,
- Nicola Guild, Solicitor, and
- Simon Stockwell, Head of Family Law Unit, Scottish Government .

John Mason declared that he is a member of ICAS.

**3. Consideration of evidence (private):** The Committee considered the evidence heard earlier in the meeting.

**Written evidence:**

- [Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.](#)

## **12th Meeting, Thursday 21 April 2022**

**1. Coronavirus (Recovery and Reform) (Scotland) Bill (in private):** The Committee agreed its Stage 1 report. The Committee agreed (by division: For: 3, Against: 3, Abstentions: 0) to recommend to the Parliament that the general principles of the Bill be agreed to on a casting vote.

## **Written evidence**

**Consultation questions:**

- Do the provisions in this Bill help deliver a recovery from the impacts of COVID for your region or sector?
- Will these provisions help address backlogs in the delivery of public services?
- Do the provisions enabling the digital delivery of public services ensure that any potential negative impacts are overcome?
- Will these provisions improve the resilience of public services to future public health threats?
- Will these provisions support the delivery of a wellbeing economy?
- Could the Bill's intended policy outcomes be delivered through other means, such as using existing legislation or in another way?
- Do these provisions disproportionately impact any individuals based on their protected characteristics, income, employment status, geographical region or in another way? If so, are these impacts mitigated by other provisions in the Bill?

- Do you have any suggestions for how this Bill could be amended? If so, please provide details.
- Any other comments.

**Written submissions:**

Aberdeen and Grampian Chamber of Commerce

Alan McIntosh

Dr Alisdair MacPherson

Anonymous (Response ID: 148495289)

Anonymous (Response ID: 216381947)

Anonymous (Response ID: 365806526)

Anonymous (Response ID: 392764565)

Anonymous (Response ID: 422898140)

Anonymous (Response ID: 558386087)

Anonymous (Response ID: 565503164)

Anonymous (Response ID: 639407626)

Anonymous (Response ID: 649332664)

Anonymous (Response ID: 701649183)

Anonymous (Response ID: 765072804)

Anonymous (Response ID: 789783149)

Anonymous (Response ID: 792460520)

Anonymous (Response ID: 850787472)

Dr Andrew Tickell and Professor Alison Britton

BMF Group

Brian Jakobsen

Children & Young People's Centre for Justice

Children and Young People's Commissioner Scotland (Response ID: 19275186)

Children and Young People's Commissioner Scotland (Response ID: 772875990)

Citizens Advice Scotland (Response ID: 19231031)

Citizens Advice Scotland (Response ID: 155708106)

Colleges Scotland

Community Help & Advice Initiative

COSLA

Crown Office and Procurator Fiscal Service

David Gault

David Graham

Dougie Sangster

East Renfrewshire Council

Edinburgh Napier University

Education Institute of Scotland

Faculty of Advocates

Greg (Response ID: 431106525)

Homeless Action Scotland

Isla (Response ID: 74898745)

K R Developments Group Ltd

Law Society of Scotland

Mental Health Tribunal for Scotland

Moray Estates

NASUWT

NHS Lothian

NFU Scotland

Lesley Blackwood

Living Rent

Lord President of the Court of Session and Lord Justice General

Lynn Strisciuglio

Margaret Ferrier

Martin Sneddon

Michael Scott

Peter Wilkins

Philip Mackie

Police Scotland

Propertymark

Public Health Scotland

Richard Scott Watson

Scottish Association of Landlords

Scottish Association of Social Work (SASW)

Scottish Courts and Tribunals Service

Scottish Information Commissioner

Scottish Private Nursery Association

Scottish Property Federation

Scottish Women's Aid

Scott Wortley

Shared Parenting Scotland

Shelter Scotland

Social Care and Social Work Improvement Scotland (the Care Inspectorate)

Taylor Buff

The Health and Social Care Alliance Scotland (the ALLIANCE)

Thomas (Response ID: 690602011)

Tommy (Response ID: 724363008)

UKHospitality Scotland

University and College Union (UCU) Scotland

University of St Andrews

Universities Scotland

Victim Support Scotland

Vivian Jenkins

West Lothian Council

**Consultation questions (short survey):**

- Which policy area(s) would you most like to comment on?

- Alcohol licensing
- Bankruptcy
- Civic licensing
- Courts, tribunals and parole boards
- Criminal justice and proceeds of crime
- Education (closing establishments and continuity of education)
- Freedom of information
- Legal aid
- Named persons nomination
- Public health
- Registration of deaths, still-births and live births
- Tenancies and evictions
- Vaccinations and immunisations
- Do you agree with the purpose of the Bill? (Yes/No/Don't Know)
- Will these provisions improve the resilience of public services to future public health threats? (Yes/No/Don't Know)
- Do these provisions disproportionately impact any individuals? (Yes / No / Don't Know)
  - Age
  - Disability
  - Gender reassignment
  - Marriage and civil partnership
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex
  - Sexual orientation
  - Island communities
  - Rural communities
  - Unemployed



- People on low income
- Other [type in]
- If you have answered yes, what type of negative impacts do you anticipate:
  - Digital exclusion
  - Restrictions on personal liberty
  - Transparency in decision-making
  - Reduced parliamentary scrutiny
  - Other [type in]
- Will these provisions help address backlogs in the delivery of public services? (Yes / No / Don't Know/Not Applicable)

**Summary of responses:**

[11th Meeting, 2022 \(Session 6\), Thursday 31 March 2022: Note by the Clerk \(CVDR/S6/22/11/1\).](#)

## **Part 1, Chapter 1: note on comparative drafting**

[Comparison of the provisions in Part 1, Chapter 1 with the emergency legislation and English and Welsh legislation](#)

# Annexe B

## Scrutiny by other committees

### Delegated Powers and Law Reform Committee

Delegated Powers and Law Reform Committee. 22nd Report, 2022 (Session 6). *Coronavirus (Recovery and Reform) (Scotland) Bill: Stage 1* (SP Paper 147).

### Education, Children and Young People Committee

Education, Children and Young People Committee. 4th Report, 2022 (Session 6). *Stage 1 Report on Part 2 of the Coronavirus (Recovery and Reform) (Scotland) Bill* (SP Paper 150).

### Criminal Justice Committee

Criminal Justice Committee. 4th Report, 2022 (Session 6). *Stage 1 Report to the COVID-19 Recovery Committee on the justice provisions in the Coronavirus (Recovery and Reform) (Scotland) Bill* (SP Paper 153).

### Local Government, Housing and Planning Committee

Local Government, Housing and Planning Committee. 5th Report, 2022 (Session 6). *Report on the Coronavirus (Recovery and Reform) (Scotland) Bill* (SP Paper 156).

### Finance and Public Administration Committee

#### Consultation questions:

- Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
- If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?
- Did you have sufficient time to contribute to the consultation exercise?
- If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
- Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

- If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
- Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

**Written submissions:**

- [Police Scotland](#)
- [Scottish Association of Landlords](#)
- [Sustainable Water Company Ltd](#)

- 1 [S6M-03035](#) George Adam: Designation of Lead Committee.
- 2 [Coronavirus Act 2020 \(c. 7\)](#).
- 3 [Coronavirus \(Scotland\) Act 2020 \(asp 7\)](#).
- 4 [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#).
- 5 [Coronavirus \(Extension and Expiry\) \(Scotland\) Act 2021 \(asp 19\)](#).
- 6 Coronavirus (Recovery and Reform) (Scotland) Bill. Policy Memorandum (SP Bill 9-PM, Session 6 (2022)), paragraph 4.
- 7 Policy Memorandum, paragraph 4.
- 8 [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill. Financial Memorandum](#) (SP Bill 9-FM, Session 6 (2022)), paragraphs 6-7.
- 9 Policy Memorandum, paragraph 46.
- 10 Policy Memorandum, paragraph 46.
- 11 Coronavirus Act 2020 (cl. 7). [Explanatory Notes](#), paragraph 88.
- 12 [World Health Organisation. International Health Regulations: Overview](#).
- 13 Health and Social Care Act 2008 (cl. 14). [Explanatory Notes](#), paragraph 30.
- 14 [Dr Andrew Tickell and Professor Alison Britton. Written submission](#).
- 15 [Dr Andrew Tickell and Professor Alison Britton. Written submission](#), paragraph 11.
- 16 [Dr Andrew Tickell and Professor Alison Britton. Written submission](#), paragraph 17.
- 17 [Dr Andrew Tickell and Professor Alison Britton. Written submission](#), paragraph 2; COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 8.
- 18 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 4.
- 19 Civil Contingencies Act 2004 (c. 36), section 2.
- 20 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 7.
- 21 [Public Health Scotland. Written submission](#).
- 22 [The Health and Social Care Alliance Scotland. Written submission](#).
- 23 [COSLA. Written submission](#).
- 24 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 8.
- 25 [Professor Fiona de Londras. Written submission](#), page 2.
- 26 [Dr Andrew Tickell and Professor Alison Britton. Written submission](#), paragraph 2.

- 27 [11th Meeting, 2022 \(Session 6\), Thursday 31 March 2022: Note by the Clerk \(CVDR/S6/22/11/1\)](#), page 11.
- 28 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 13.
- 29 [Delegated Powers and Law Reform Committee. 22nd Report, 2022 \(Session 6\). Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: Stage 1 \(SP Paper 147\)](#), paragraph 49.
- 30 Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.
- 31 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 4.
- 32 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 4.
- 33 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 3.
- 34 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Cols 4-5.
- 35 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 5.
- 36 Further information on the four harms is explained in the Strategic Framework: [Scottish Government \(2021\) Coronavirus \(COVID-19\): Strategic Framework update - February 2021](#) .
- 37 [Scottish Government. \(2020\) Coronavirus \(COVID-19\): Scotland's Strategic Framework](#) .
- 38 Public Health Scotland. Written submission, page 1.
- 39 COSLA. Written submission.
- 40 Scottish Association of Social Work. Written submission.
- 41 [Dr Andrew Tickell and Professor Alison Britton. Written submission](#), paragraphs 33-35.
- 42 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 5.
- 43 Public Health (Control of Disease) Act 1984 (c. 22), section 45D(4)(a).
- 44 [Professor Fiona de Londras. Written submission](#), page 7.
- 45 [Professor Fiona de Londras. Written submission](#), page 8.
- 46 Policy Memorandum, pages 12-15.
- 47 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 12.
- 48 Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.
- 49 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 15.
- 50 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 17.

- 51 [COVID-19 Recovery Committee. 1st Report, 2022 \(Session 6\). Stage 1 Report on The Coronavirus \(Discretionary Compensation for Self-isolation\) \(Scotland\) Bill \(SP Paper 78\)](#), paragraph 68.
- 52 [Delegated Powers and Law Reform Committee. 12th Report, 2022 \(Session 6\). Inquiry into the use of the made affirmative procedure during the coronavirus pandemic \(SP Paper 110\)](#).
- 53 [Delegated Powers and Law Reform Committee. 22nd Report, 2022 \(Session 6\). Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: Stage 1 \(SP Paper 147\)](#), paragraphs 23-24.
- 54 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 9.
- 55 [Education, Children and Young People Committee. 4th Report, 2022 \(Session 6\). Stage 1 Report on Part 2 of the Coronavirus \(Recovery and Reform\) \(Scotland\) Bill \(SP Paper 150\)](#), paragraph 80.
- 56 [Delegated Powers and Law Reform Committee. 22nd Report, 2022 \(Session 6\). Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: Stage 1 \(SP Paper 147\)](#), paragraphs 23-24.
- 57 Dr Andrew Tickell and Professor Alison Britton. Written submission, paragraph 25.
- 58 Dr Andrew Tickell and Professor Alison Britton. Written submission, paragraph 25.
- 59 Professor de Londras. Written submission, page 11.
- 60 Civil Contingencies Act 2004 (c. 36), section 22(3)(j).
- 61 Dr Andrew Tickell and Professor Alison Britton. Written submission, paragraphs 28-29.
- 62 Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.
- 63 Public Health etc. (Scotland) Act 2008 (asp 5), section 94(3).
- 64 Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.
- 65 For reference, the Eleventh Two-Monthly Report to the Scottish Parliament, 29 Acts provided the legislative basis for Coronavirus SSIs in the reporting period (in addition to the UK Coronavirus Act, and the Scottish Coronavirus Acts): Scottish Government. (February 2022) [Coronavirus Acts: eleventh report to Scottish Parliament](#) .
- 66 Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.
- 67 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 3. See: Sean Molloy, Maria Mousmouti, Franklin De Vrieze, Westminster Foundation for Democracy (17 January 2022). [Sunset Clauses and Post-Legislative Scrutiny: Bridging the Gap between Potential and Reality](#) .
- 68 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 3.

- 69 Professor Fiona de Londras. Written submission, page 8.
- 70 Professor Fiona de Londras. Written submission, page 11.
- 71 Coronavirus (Scotland) Act 2020 (asp 7), section 15; Coronavirus (Scotland) (No.2) Act 2020 (asp 12).
- 72 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 9.
- 73 Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.
- 74 Deputy First Minister and Cabinet Secretary for COVID Recovery. Written submission, 8 April 2022.
- 75 The term "medical practitioner" refers to anyone registered on the Register of Medical Practitioners with the General Medical Council. See section 2 of the Medical Act 1983: [https://www.gmc-uk.org/-/media/documents/medical-act-1983\\_pdf-73285575.pdf](https://www.gmc-uk.org/-/media/documents/medical-act-1983_pdf-73285575.pdf).
- 76 Policy Memorandum, paragraph 70.
- 77 Policy Memorandum, paragraph 71.
- 78 See for example: Anonymous (Response ID: ANON-HKVK-CFQ2-Z). Written submission; Lynn Strisciuglio. Written submission; Richard Scott Watson. Written submission.
- 79 See for example: Martin Sneddon. Written submission; Dougie Sangster. Written submission.
- 80 Health and Social Care Alliance Scotland (the Alliance). Written submission.
- 81 Health and Social Care Alliance Scotland (the Alliance). Written submission.
- 82 Policy Memorandum, paragraph 131.
- 83 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 7.
- 84 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 6.
- 85 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 17.
- 86 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 4.
- 87 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 8.
- 88 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 22.
- 89 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 23.
- 90 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 23.
- 91 [Professor McKenzie Skene. Supplementary written evidence.](#)
- 92 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 14.

- 93 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 15.
- 94 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 15.
- 95 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 20.
- 96 [SPICe Briefing SB 22-13 Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: health, education, public Services and housing, page 16.](#)
- 97 Policy Memorandum, paragraph 133.
- 98 Policy Memorandum, paragraph 138.
- 99 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 17.
- 100 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 10.
- 101 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 20.
- 102 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 18.
- 103 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 21.
- 104 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 4.
- 105 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 2.
- 106 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 3.
- 107 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 5.
- 108 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 5.
- 109 COVID-19 Recovery Committee. *Official Report, 24 March 2022*, Col 15.
- 110 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 21.
- 111 [Wider Review- Stage 2 . Accountant in Bankruptcy](#)
- 112 [COVID recovery: a consultation on public health, public services and justice system reforms.](#)
- 113 [Money Advice Scotland. Written submission.](#)
- 114 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 20.
- 115 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 20.
- 116 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 21.
- 117 [Professor McKenzie Skene. Supplementary written evidence.](#)
- 118 In her supplementary written evidence, Professor McKenzie Skene explained that there is an ongoing review of debt solutions in Scotland and that Stage 2 of the review was due to conclude with the submission of reports from 3 separate working groups. The threshold issue was considered by working group 3, of which she was the Chair.



- 119 [Professor McKenzie Skene. Supplementary written evidence.](#)
- 120 [Professor McKenzie Skene. Supplementary written evidence.](#)
- 121 [COVID recovery: a consultation on public health, public services and justice system reforms.](#)
- 122 Policy Memorandum, paragraph 36.
- 123 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 28.
- 124 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 29.
- 125 COVID-19 Recovery Committee. *Official Report, 3 March 2022*, Col 28.
- 126 [Professor McKenzie Skene. Supplementary written evidence.](#)
- 127 Policy Memorandum, paragraph 285.
- 128 Scottish Government (15 January 2019) "Mental health law in Scotland: guide to named persons" ISBN: 9781787812840. Accessed at: <https://www.gov.scot/publications/mental-health-law-scotland-guide-named-persons/documents/>.
- 129 Scottish Government (15 January 2019) "Mental health law in Scotland: guide to named persons" ISBN: 9781787812840. Accessed at: <https://www.gov.scot/publications/mental-health-law-scotland-guide-named-persons/documents/>.
- 130 [Mental Health \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 53-PN, Session 4 (2014)), paragraph 89.
- 131 [Mental Health \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 53-PN, Session 4 (2014)), paragraph 90.
- 132 Professionals who qualify as a "prescribed person", include an independent advocate; medical practitioner; arts therapist, dietician, occupational therapist, physiotherapist, practitioner psychologist and speech and language therapist; person employed in the provision of, or managing the provision of, a care service; registered nurse; social worker; and solicitor when they agree to become a named person. See: Policy Memorandum, paragraph 285.
- 133 [Mental Health \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 53-PN, Session 4 (2014)), paragraph 90.
- 134 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 23.
- 135 Policy Memorandum, paragraph 285.
- 136 Policy Memorandum, paragraph 266.
- 137 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 23.
- 138 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 22.
- 139 Scottish Association of Social Work. Written submission.
- 140 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 24.

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141 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 25.

142 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 25.

143 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 25.

144 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 29.

145 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 29.

146 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 30.

147 COVID-19 Recovery Committee. *Official Report, 10 March 2022*, Col 23.

148 COVID-19 Recovery Committee. *Official Report, 31 March 2022*, Col 19.

