

Consultation Response

Extending Temporary Justice
Measures in the Coronavirus
(Recovery & Reform)
(Scotland) Act 2022

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Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Extending Temporary Justice Measures in the Coronavirus (Recovery and Reform) (Scotland) Act 2022. The Committee has the following comments to put forward for consideration.

Consultation questions

Part 1: Courts and tribunals – conduct of business by electronic means

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating.

We have identified that many users of the criminal justice system prefer conducting hearings by electronic means. As we indicated in our [consultation response on the Coronavirus Recovery and Reform \(Scotland\) Act 2022 – Criminal Justice Measures](#), some of the measures contained in Part 1, Chapter 1 have had remarkable practical results.

We still maintain some concerns related to the presence of the accused person in the course of the proceedings. We are of the view that consultations between the accused person and defence solicitors should be preferred in person but we welcome providing flexibility to the system. We consider that it should be a matter for the Court to set the boundaries related to the extent of that flexibility.



Part 2: Fiscal Fines

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating.

We replicate the comments that we provided in our last consultation response related to the Criminal Justice Measures in the Coronavirus Recovery and Reform (Scotland) Act 2022.

We are of the view that provisions contained in Part 2 regarding fiscal fines seem to be working effectively. We were unable to find evidence to suggest that higher level fiscal fines are being used inappropriately.

Part 4: National jurisdiction for callings from custody etc.

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating.

We recognise the importance of the principle of local justice. However, we consider that having a flexible criminal justice system has positive impacts in some disruptive situations.

We have identified that measures contained in Part 4 are working well in custody courts and have impacted positively for the accused's interest.

As we indicated in [our previous consultation response](#), we consider that local hybrid custody courts may work better.

Part 5, Chapter 1: Criminal procedure time limits

- a) What impact are these provisions having?
- b) What would the impact be if the provisions expired on 30 November 2024?
- c) Please share any other feedback on how these provisions are operating.

We consider that two main factors contribute significantly to the backlog problem in Scottish criminal courts: the lack of capacity of senior council and court rooms.

We note that the impact of backlogs in Sheriff Courts is mixed. Its impact varies from court to court.

While we understand that the main justification for the time limits provisions in the Act was the time pressures related to the COVID-19 pandemic, we are of the view that are other causes justify the extension of the time limits for court proceedings.



We consider that if time limits are imposed, it is expected that court users and staff respect them.

Is there any further feedback you would like to provide to the Scottish Government on extending temporary justice measures?

We consider that some discussion should be given to the flexibility for witnesses to appear in Court. As we have indicated in previous responses, having flexibility on how to present the evidence is something positive. However, we are of the view that the decision should be kept by the party who is presenting that evidence.



For further information, please contact:

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