

CORONAVIRUS BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM BY THE DEPARTMENT FOR HEALTH AND SOCIAL CARE

1. The Government has tabled further amendments to the Coronavirus Bill in advance of the Commons Committee Stage due to take place on 23 March 2020. These include modifications to the following existing powers:
 - Amendment 19 to Clause 47 and Schedule 18 to place restrictions on the use of the power allowing Scottish Ministers to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination (from coronavirus) in Scotland. This change makes a drafting correction to the original clause.
 - Amendments 26 - 32 to Clauses 58, 60, 63 and 64, along with New Clauses 17 and 18 to broaden the scope of the powers in relation to the cancellation of polls including those required to be held after 15 March 2020 and to remove criminal liability on returning officers and the like arising where polls are postponed.

Government amendments have also included the following new provisions with delegated powers:

- New Clause 15 and NS2 that confers a regulation-making power on Welsh Ministers to allow medical practitioners who have received an emergency registration from the GMC to practise in the NHS in Wales while their application to join a performers list is being processed.
 - New Clause 20 which create a power for the Secretary of State, the Welsh Ministers, and the Department for Communities in Northern Ireland to make regulations to amend requirements for meetings of local authorities in England and Wales, and Northern Ireland.
 - New Clause 23 that confers a regulation-making power on the Home Secretary so that she may vary the statutory retention deadlines for biometric material (fingerprints and DNA profiles) taken under relevant specified counter-terrorism and law enforcement legislation.
 - New Clause 24 and New Schedule 3 which creates a power is to ensure a statutory period of notice of three months that is required before proceedings for possession can be brought under the Rent Act 1977, Housing Act 1985, Housing Act 1988 and Housing Act 1996.
 - New Clause 30 which makes provision for a three month moratorium on the ability of landlords of commercial properties in England and Wales to exercise any right of forfeiture that they may have due to the non-payment of rent by tenants.
 - New Clause 31 which makes provision for a three month moratorium on the ability of landlords of commercial properties in Northern Ireland to exercise any right of forfeiture that they may have due to the non-payment of rent by tenants.
2. This supplementary memorandum explains the nature of the modifications to existing powers with the reasons for these are set out. It also outlines the new clauses that

have been tabled setting out why the power has been taken and explaining why the procedure has been proposed.

Amendment 19 to Clause 47 and Schedule 18: Health protection regulations: Scotland

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure, with the option of an expedited procedure in cases of urgency

Context and Purpose

3. Section 47 and Schedule 18 of the Bill provide the Scottish Ministers with regulation-making powers allowing them to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination (from coronavirus) in Scotland. One of the key purposes of the provision is to ensure that Scottish Ministers have powers that are equivalent to those in the rest of the UK.
4. Amendment 19 amends the power to fix a drafting error. It ensures a restriction is placed on the use of the power so that it can't be used to directly require people to submit to medical examination, be removed or detained in a hospital or elsewhere, or be kept in isolation or quarantine. This restriction appears in the equivalent provisions across the rest of the UK, and is reflected in the equivalent provisions in the Bill for Northern Ireland. Regulations made under the power could still enable the imposition of such restrictions or requirements - if imposed by virtue of a decision taken under the regulations by the Scottish Ministers, a local authority, health board or other person.

Justification for taking the power

5. The amendment fixes a drafting error and ensures the scope of these powers are consistent across the UK.

Justification for the procedure

6. The procedure for Regulations made under Schedule 18 is the affirmative procedure, with an expedited procedure being available in cases of urgency. The procedure is unchanged from the original delegated powers memorandum and the justifications remain the same.

Amendments 26-32 to Clause 58, 60, 63 and 64 and insertion of New Clauses 17 and 18 in relation to polls that were required in England or in Wales to be held, but were not held, in the period after 15 March 2020 (Powers to postpone relevant elections and local authority referendums)

Power conferred on: Secretary of State or Minister for the Cabinet Office (in relation to England) and Welsh Ministers (in relation to Wales)

Power exercised by: Regulations

Henry VIII power: Yes, the regulation power is capable of being exercised so as to amend, repeal or revoke any enactment

Parliamentary procedure: Negative resolution procedure

Context and purpose

7. These amendments and new clauses make provision where a poll was cancelled on or after 16 March, including amending the powers in clauses 58, 60, 63 and 64. The amendments broaden the scope of these powers, and are intended to provide that the powers in clause 58 and 63 to set a new date for polls applies to those polls cancelled by Returning Officer (or other officer responsible for running a poll) in the period between 16 March 2020 and Royal Assent, as well as those that may arise between Royal Assent and 5 May 2021; and provide that the powers in clauses 60 and 64 can be used to remove criminal liability arising where polls are postponed.
8. They are also made to ensure the power to make supplementary provision (clause 60) can be used to make necessary changes to the Structural Change Orders made under the Local Government and Public Involvement in Health Act 2007 for certain local authorities in England where the poll to elect council members has been postponed.
9. Clause 60 provides a power for the Secretary of State or the Minister for the Cabinet Office by regulations to make supplementary, consequential, incidental, transitional or saving provision in connection with the postponement of polls. The amendment ensures regulations under this clause includes power to make retrospective provision because some polls will have been due to be held before Royal Assent or before regulations under clause 58 could postpone them. It also allows for disapplication of any enactment that would impose criminal liability in relation to their postponement.
10. Subsection (2) contains some examples of what may be done using the power under clause 60. Regulations may, for example, need to make provision about things which have already been done (for example, if some postal votes had already been received), or not yet done (for example, in the lead-up to an election which it was known would be postponed). The power includes the ability to remove criminal liability for such acts or omissions. This is because Returning Officers, Counting Officers and Presiding Officers could otherwise incur criminal liability if they breach their statutory duties in relation to the running of polls. This criminal liability is removed for polls taking place before or shortly after Royal Assent by the new clause being inserted by the amendment. But for those due to be held on 7 May 2020 or those polls which are being postponed by clause 57 or under the power in clause 58, that can be addressed through regulations under this clause.

11. The power can also be used to deal with other important aspects such as the nomination of candidates, the treatment of incumbents (particularly to ensure that their terms of office continue beyond the date of the poll which was supposed to take place), and additional election expenses of various people involved in the process where a poll is then postponed.
12. Provision to address these consequences of postponing polls is likely to require amendment or modification of the existing statutory regimes. Whilst much of this detail will be contained in secondary legislation, some of it relates to statutory provisions in primary legislation which may need to be modified. Similarly, the power to postpone elections may need to be used to amend primary or secondary legislation which sets the dates or timeframes which would otherwise apply. The powers are to be exercised by way of negative instrument.
13. Corresponding provision is made for Wales and the regulation making powers of Welsh Ministers by the amendments to clauses 63 and 64.

Justification for taking the power

14. These powers are necessary in order to enable relevant polls or the petition process for MP recall to be postponed, in the event that the prevailing medical situation is such as to render such polls administratively undeliverable due to a range of workforce and other logistical issues; or risks compromising the democratic process because a large proportion of the voting community is unable to vote due to illness or social isolation measures being in place.
15. The justification for the power to make supplemental and consequential provision is the same as that given for the substantive clauses. Postponement of polls will give rise to multifarious administrative difficulties, differing in respect of each poll (as a result of the different statutory regimes in play). Those impacts will also vary according to the point at which the relevant poll is postponed, because of the statutory timetable applicable in the run-up to polls. Because these provisions are set out in both primary and secondary legislation, the power needs to be capable of operating on either. The power as amended however is needed for the effects of enabling the making of retrospective provision, and the need to address administrative issues arising from polls that would be due to be held before it is possible to make regulations postponing them.
16. As explained above, the power to postpone relevant polls might also require amendments to legislation (including primary legislation) setting out the date of a poll.

Justification for the procedure

17. The Government is concerned to ensure that provision to postpone polls and to deal with ancillary matters can be made swiftly, and even if Parliament is not sitting. That is because polls arise by operation of statute, and in response to circumstances outside government's control (for example, due to the incapacity or retirement of an individual holding a particular post). Polls for by-elections are often required by statute to be held within a relatively short period of time. Use of the negative resolution procedure is required in order to safeguard against an inability to act during recess or where there

is an inability to make postponing provision quickly enough to be effective, which is important for certainty and to remove the administrative burden from local authorities and returning officers, for example, who would otherwise be needing to take steps to comply with their statutory obligations.

18. In respect of the powers conferred on the Welsh Ministers, the Welsh Ministers are concerned to ensure that provision to postpone polls and to deal with any relevant ancillary matters arising from a decision to do so can be made swiftly and coherently taking a whole Wales approach to delaying any casual vacancies that may arise at local authority level. That is because polls arise by operation of statute, and in response to circumstances outside the government's control (for example, due to the incapacity or retirement of an individual holding a particular post). Polls for by-elections are often required by statute to be held within a relatively short period of time. Use of the negative resolution procedure is required in order to safeguard against an inability to act when the National Assembly for Wales is in recess or the inability to make postponing provision quickly enough to be effective, which is important for certainty and to remove the administrative burden from local authorities and returning officers, for example, who would otherwise be needing to take steps to comply with their statutory obligations.
19. The government and the Welsh Ministers acknowledge the breadth and reach of these powers in a constitutionally sensitive area. However, there remain significant constraints on the exercise of the powers.
20. The regulation-making power is designed to permit the flexibility to make less intrusive provision than might otherwise be in play. It will be noted that the Bill also contains a 12 month general postponement of those elections scheduled for 7 May 2020, until the next ordinary day of elections on 6 May 2021. This is a sensible and proportionate approach for those polls which always take place in May. However, the government also wants to permit a more flexible approach to be taken in respect of other elections and local referendums so that proportionate action can be taken. The regulation-making power will provide the flexibility to enable elections and referendums to take place over the next 14 months where the medical situation permits (given that these are likely only to be taking place in a limited local area, rather than across England and Wales as with the 7 May 2020 scheduled polls). That will support both the continued effective working of local government and the continuation of democratic engagement in such processes.
21. However, in order to ensure that the period of a potential postponement is not longer than is currently foreseen to be necessary, the power cannot be used to postpone a poll until later than 6th May 2021. If further postponements are likely to be necessary, additional legislation would be required.
22. Finally, while the Henry VIII powers in these clauses would usually be subject to affirmative procedure, it is considered that any amendments to primary legislation that are required in connection with the exercise of the powers under these clauses would need to be made urgently, and would be strictly connected to the purpose of postponing polls due to the impacts of the Covid-19 epidemic, and time-limited in their effect as postponements cannot be beyond 6 May 2021. The government believes that the departure from the usual affirmative procedure is justified in this case.

New Clause 15 and accompanying New Schedule 2: Emergency arrangements concerning medical practitioners: Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations

Parliamentary Procedure: Negative Resolution Procedure

Context and purpose

23. In addition to the UK-wide system of professional registration operated by the General Medical Council, the NHS in Wales also operates “medical performers lists” with which a medical practitioner in Wales must be registered before they can practise on behalf of a Local Health Board in Wales. This allows a Local Health Board in Wales to suspend or bar a GP from practising in the Local Health Board area specifically without depending upon the GMC to strike off the medical practitioner altogether.
24. This additional requirement to be registered with a performers list may create a barrier to medical practitioners responding quickly to assist during the emergency. The risk is that although many previously inactive medical practitioners may find themselves registered again as medical practitioners with the GMC, they would still be ineligible to provide primary medical services because their name is not on a performers list. Modifications to the operation of performers lists are therefore needed to support the emergency response.
25. The modifications will allow medical practitioners who have received an emergency registration from the GMC to practise in the NHS in Wales while their application to join a performers list is being processed. Crucially, the medical practitioners do still have to apply and the Local Health Boards may require particular medical practitioners to complete the full process before practising if they have any concerns about them. Any medical practitioner who gives a Local Health Board cause for concern can still be prevented from practising.
26. The clause operates by modifying two sets of regulations: the National Health Service (Performers Lists) (Wales) Regulations 2004 (SI 2004/2010 (W 117)) (“Performer List Regulations”) and the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (SI 2004/478 (W 48)) (“GMS Contract Regulations”). The requirement for medical practitioners to be on a performers list is set out in the Performer List Regulations. The GMS Contract Regulations set out the framework for general medical service contracts and in particular sets out that a general medical practice providing services under a GMS Contract is not allowed to employ a medical practitioner who is not listed on a performers list. It is therefore necessary to modify the application of these regulations to refer to the new exception for temporarily registered medical practitioners created by the proposed modifications to the Performer List Regulations. In the absence of this, although a temporarily registered medical practitioner would be allowed to provide the services, technically their employer (i.e. the general medical practice) would be in breach of contract. In addition, there is also a power for the Welsh Ministers by regulations to modify the provisions in the Schedule.

Justification for taking the power

27. It is not known at what time during the response effort the Secretary of State will declare an emergency in order to allow the GMC to grant emergency registrations to doctors. This clause would only be required in the event that it is necessary for the GMC to recruit emergency registrants. As this clause represents a relaxing of requirements which are intended to protect patients, it would not be appropriate to have the modifications in operation for longer than is necessary.
28. As noted, the modifications in the Bill relax requirements which are intended to protect patients. The government proposes that the correct balance has been struck between the protection of patients and the need to increase health service capacity. However, as the emergency develops it may be necessary to reassess where this balance lies. For example, the assumption in the modification is that Local Health Boards will still be able to process applications but will do so at reduced speed. If the situation were to develop to the point where the Local Health Boards had no capacity at all to process applications the modifications would require to be updated to reflect that situation. Given the speed at which the situation can change, it is most feasible to make these changes by secondary legislation and the power to alter the terms of the Schedule would offer the means to revise the requirements for making medical practitioners available in Wales.

Justification for the procedure

29. The Performers Lists system is established by the National Health Service (Primary Medical Services Performers Lists) (Wales) Regulations 2004 and referred to in National Health Service (General Medical Services Contracts) (Wales) Regulations 2004. These Regulations are made under the negative resolution procedure. It would be open to the Welsh Ministers currently to make provision substantially similar to the provisions made by this clause by amending these regulations. It is therefore considered appropriate to apply an equal level of scrutiny to the use of these powers as would be applied to regulations amending these regulations.

New Clause 20: To confer power on the Secretary of State, Welsh Ministers and Department for Communities in Northern Ireland to make regulations in relation to meetings of specified local authorities.

Power conferred on: Secretary of State for Housing, Communities and Local Government; the Welsh Ministers; the Department for Communities in Northern Ireland

Power exercised by: Regulations

Henry VIII power: Yes

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

30. New Clause 20 provides a delegated power for the Secretary of State, the Welsh Ministers in respect of bodies in Wales, and the Department for Communities in Northern Ireland in respect of local authorities in Northern Ireland to make regulations to amend requirements for meetings of local authorities in England and Wales, and Northern Ireland. The requirements include the obligations for local authorities to hold meetings, the requirements on timing and frequency of meetings, the place at which meetings must be held, the way in which people should attend, speak at and vote; and public admission and access to these meetings and access to documents relating to such meetings.
31. The definition of local authority includes county councils, district councils, county borough councils, combined authorities, parish councils, local planning authorities, fire and rescue authorities and national park authorities. The power to make regulations extends to meetings of a local authority, an executive of a local authority, a joint committee of a local authority, or a committee or sub-committee of the authority of any of those bodies. New Clause 20 limits the regulation-making power to meetings required to be held, or held, before 7 May 2021.
32. New Clause 20 provides a power for the Secretary of State, the Welsh Ministers or the Department for Communities in Northern Ireland to make supplementary, consequential, incidental, transitional or saving provision in connection with requirements for meetings of local authorities. Such matters may include (for example) the ability to make provision for meetings being held without all the persons, or without any of the persons, being together in the same place, which would enable local authorities to hold meetings remotely.
33. The powers are to be exercised by way of negative instrument. New Clause 20 contains Henry VIII powers, which may be exercised so as to amend primary legislation.

Justification for taking the power

34. These powers are necessary in order to increase local authorities' flexibility over how they can conduct their meetings. The regulations will make provision to remove the requirement for local authorities to hold annual meetings between March and May 2020. This is necessary to give authorities maximum flexibility to respond and redeploy as necessary to focus on the vital roles they have in the face of the ongoing coronavirus pandemic as well as ensuring essential business continues and statutory decisions are made. The regulations will also allow for local authorities to hold meetings remotely and minimise risks to their continuing conduct of business while still upholding democratic principles, and ensure their members and officers can act in accordance with official health guidance.
35. The power to make consequential provision is necessary because provision to ensure meetings can be held flexibly will differ among authorities (as a result of the different statutory regimes in play). For example, there is no provision to enable remote attendance at meetings of county councils, district councils or parish councils in England. The government needs to ensure that appropriate provision is made to ensure local authority meetings can remain quorate and make valid decisions, and to

allow for public and press access. Because these provisions are set out in both primary and secondary legislation, the power needs to be capable of operating on either.

Justification for the procedure

36. The government is concerned to ensure that provision to modify or disapply the statutory requirements in relation to certain meetings, to enable flexible attendance at local authority meetings and to deal with ancillary matters can be made swiftly, including when Parliament is not sitting. The local authorities covered by the regulation-making power are required to undertake a number of essential and unusual functions in the coming weeks in the face of the ongoing coronavirus pandemic. This is alongside an expectation that they contribute to local resilience planning for the pandemic through Local Resilience Forums and continue the effective delivery of local services, including planning and licensing.
37. Use of the negative resolution procedure is required in order to safeguard against an inability to act when Parliament is in recess or the inability to make effective provision at an appropriate pace, which is important for certainty and to allow for local authorities to exercise their functions with proper regard for public safety, while continuing to allow for remote public and press access. The regulation-making power is limited, in that it cannot be used in respect of meetings which take place later than 7th May 2021 or an earlier date if specified. If further provision is required for meetings which take place after this date, additional primary legislation would be required. The Government suggests this provides a proportionate approach to the use of the power.
38. While the Henry VIII powers in these clauses would usually be subject to the affirmative procedure, given the necessity for continuous functioning of local authorities for an effective response to the pandemic and the delivery of essential services, any amendments to primary legislation that are required in connection with the exercise of the powers under these clauses would need to be made urgently. The government proposes that the departure from the usual affirmative procedure is justified in this case.

New Clause 23: Extension of time limits for retention of fingerprints and DNA profiles on national security grounds

Power conferred on: Secretary of State (Home Department)

Power exercised by: Regulations

Parliamentary Procedure: Negative Resolution Procedure

Context and purpose

39. Biometrics taken or received in the UK can be retained for initial specified periods. The statutory retention periods for biometrics taken under terrorism legislation vary from 6

months to 3 years depending on the power by which the biometrics were taken. Biometrics taken under Police and Criminal Evidence Act (PACE) 1984 powers, or similar legislation applicable in Scotland and Northern Ireland, may also be retained depending on the alleged offence and conviction status of the individual.

40. Under powers established in the Protection of Freedom Act 2012, a chief officer of police may order that biometrics be retained on grounds of national security by making a National Security Determination ('NSD') if it is necessary and proportionate to do so. A NSD must be in writing and lasts for a maximum of two years beginning with the date it is made. A NSD may be renewed for a further period of two years on any number of occasions.
41. Counter-Terrorism Policing has confirmed that – due to the impact of coronavirus on its resourcing – it is unable to maintain business-as-usual in relation to the reviews of intelligence required to process and submit NSDs. As statutory retention periods end biometrics will automatically be deleted. This could result in the loss of the biometrics of up to 150 individuals per month (many of these could be subjects of national security interest).
42. Biometrics are used daily in support of national security. Biometric material held using NSDs has led to the identification of individuals thought to have travelled to take part in the conflict in Syria/Iraq; linked individuals to other intelligence provided by overseas partners; linked individuals to unidentified crime stains; provided evidence of potential terrorist offences; and matched to potential visa and asylum applications, resulting in individuals being refused entry to the UK.
43. The power confers a regulation-making power on the Home Secretary so that she may vary the statutory retention deadlines for biometric material (fingerprints and DNA profiles) taken under relevant specified counter-terrorism and law enforcement legislation. Regulations will only be made where the effects of coronavirus restrict the capacity of chief police officers to consider the case for making / remaking NSDs, and only after consultation with the Biometrics Commissioner.

Justification for taking the power

44. Due to the effects of coronavirus on Counter-Terrorism Policing's resourcing and the risk of losing a critical national security capability, the Government considers there is a need to be able to make regulations to extend the statutory retention deadline for biometrics where retention may be necessary on national security grounds. Due to the unpredictable challenges posed by coronavirus and its effects, regulations may need to be made more than once, so that the Government can support Counter-Terrorism Policing to respond to enduring circumstances.

Justification for the procedure

45. The Government proposes that the negative procedure would be appropriate. The procedure would be suitable for the need to effect an extension with urgency. The power enables the Home Secretary to vary the statutory retention deadline by up to six months through regulations. The power enables the Home Secretary to make further regulations to extend the period for which fingerprints and DNA profiles may be

retained for national security purposes but prohibits the total cumulative extension period exceeding more than 12 months.

46. Additionally, the power contains the following limitations on its scope and safeguards:

- It expressly limits the scope to make regulations in response to the effects that coronavirus is having, or is likely to have, on the capacity of a chief officer of police to consider whether fingerprints or DNA profiles need to be retained in the interests of national security.
- It expressly limits the regulations that can be made to making provision for the retention of material which would otherwise fall to be destroyed in the period of 12 months starting with the date of Royal Assent.
- It makes express provision requiring the Home Secretary to consult with the Biometrics Commissioner before making regulations.
- The power is limited so that it ceases to have effect unless it is exercised within 3 months of Royal Assent.

New Clause 24 and New Schedule 23: Protection from Eviction

Power conferred on: Secretary of State in relation to England, Welsh Ministers in relation to Wales

Power exercisable by: Regulations

Henry VIII power: Regulations can amend the Schedule and any enactment for supplementary etc provision

Parliamentary procedure: Negative resolution procedure

Context and purpose

47. The effect of this clause is to increase the statutory period of notice that is required before proceedings for possession can be brought under the Rent Act 1977, Housing Act 1985, and Housing Act 1988 and Housing Act 1996. That legislation all provides statutory security of tenure for tenants. The Housing Act 1985 and 1996 relate to social sector rents where the landlords are Local Authorities and Housing Associations. The other two Acts relate to the private sector where landlords are a mixture of individual landlords owning one or more properties and institutional landlords. The provisions therefore treat private and social sector tenants in the same way.

48. The grounds for possession vary. In some cases they are based on the default of the tenant e.g. arrears of rent, anti-social behaviour. These are breaches of contract in any event. In some cases they are non-default e.g. landlord wishes to move back in, wishes to sell or redevelop the property. In such cases the grounds for possession allow the landlord to terminate the tenancy agreement earlier than would otherwise be the case. Were it not for security of tenure, the landlord might be able to terminate the tenancy and evict at common law.

49. The various Acts that cover tenancy agreements and the right to gain possession already contain minimum notice requirements before proceedings for possession can be commenced save in the case of section 3 of the Rent Act 1977 where no notice is required and section 83 of the Housing Act 1985 in relation to tenancies for a certain term where no period of notice is specified. The current specified notice periods vary from 2 weeks to 2 months depending on the relevant Act, the type of tenancy and the ground relied on. The new clause means the Bill makes provision for all notice periods to be a minimum of 3 months and to create a new notice requirement for section 3 of the Rent Act 1977 (extending also the period for notice to quit to 3 months).
50. It applies to all notices given within the period from the day after the coming into force of the Act and 30 September 2020 (“the relevant period”).
51. Regulation making powers under the Schedule allow for changes to be made to the relevant period and to the notice periods.
52. The regulation making power in paragraph 1 of the Schedule allows the relevant national authority (Secretary of State in relation to England or Welsh Ministers in relation to Wales) to extend the period, on one or more occasions.
53. The regulation making power in paragraph 14 means that the length of the notice periods that are required may also be altered from three months to six months or another specified period of a length between those two. Different provision can be made for different purposes and different areas and includes power to make supplemental, incidental, consequential, transitional, transitory or saving provision, including provision amending the Schedule or any enactment, for example in relation to notices that have already been served in the relevant period.

Justification for taking the power

54. It is not known how landlord and tenant behaviour will change as a result of the impact of the coronavirus on tenants’ ability to pay rent or other issues that may arise. The three month period has been selected as striking a fair balance between the policy aim of ensure there is not a significant spike in evictions and the rights of landlords to regain possession of their property for whatever reason. The three month period applies across all types of tenancy and in relation to all grounds as this is considered to be the most appropriate way of ensuring the aim of the policy. As time goes on and the situation on the ground evolves and a clearer picture of the impact of the pandemic becomes available, the government may consider it necessary to extend the period for which the three month notice applies and or to change the notice period. The power has been drafted to give maximum flexibility so that if considered appropriate different periods of notice could be applied to different grounds for possession or in different sectors going forward as circumstances dictate.
55. The provisions relating to requirements to serve notice of intended possession proceedings are intended to be a temporary measure and accordingly will only apply for limited period, currently envisaged to be from commencement until 30 September 2020. Given the extraordinary circumstances created by the coronavirus pandemic it may become necessary to extend the relevant period and therefore it is wished to

reserve a power to do so if the circumstances require it. As things stand a period of 3 months' notice is considered to be the appropriate period. However, it is considered there may be a need to extend that 3 month period to adapt to changing circumstances. For example, if there is a significant rise in landlords serving notice of intention to issue proceedings for possessions and resulting possession proceedings being brought it may be necessary to extend both the relevant period and the length of the minimum notice required.

Justification for the procedure

56. In the government's view, the negative resolution procedure would give Parliament the right level of scrutiny of these regulations. The government wishes to retain the ability to extend the period for which the provisions will apply beyond 30 September 2020 and extend or reduce the specified notice period should circumstances require it. The negative resolution procedure enables provision to be made in an agile and speedy manner and in response to the extraordinary and unpredictable circumstances created by the coronavirus pandemic. It would also allow changes to be made whilst Parliament is in recess.

57. The provisions to which the powers relate are subject to the reporting requirements of clause 83 of the Bill and to the sunset provisions of the Bill so can only be exercised for a finite period of time.

New Clause 30: Business tenancies: protection from forfeiture – England and Wales

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Negative resolution procedure

Context and purpose

58. This new clause makes provision for a three month moratorium on the ability of landlords of commercial properties to exercise any right of forfeiture that they may have due to the non payment of rent by tenants. The provision simply delays the right of forfeiture; it does not otherwise impinge on a landlord's right to claim forfeiture or recover rent at the end of that period. The period of time for the moratorium runs from Royal Assent to 30 June 2020 ("the relevant period"). Subsection 12 gives the Secretary of State power by regulations to extend the relevant period or (on one or more occasions).

Justification for taking the power

59. Due to the current uncertainty surrounding the coronavirus pandemic the Government wishes to protect commercial tenants from eviction for a set period. Businesses affected by liquidity and cashflow issues as a result of the current situation will face

evictions from their commercial premises (and therefore risk of ceasing trading all-together) if they are unable to meet upcoming rent payments.

60. Many commercial landlords are already reaching voluntary arrangements with tenants, for example to make payments monthly rather than quarterly. However, there will be some businesses worried about security of tenure during this difficult period and this change will provide much-needed certainty.
61. Commercial leases may be forfeited for non-payment of rent. We are legislating to ensure that leases cannot be forfeited for non-payment of rent for a three month period, applied to all types of commercial tenants. This option encourages businesses that are in a position to make their rent payment to do so, whilst providing three months' grace to those that are struggling.
62. This position is in line with the government's previous announcement to bring forward primary legislation to prevent the eviction of private rented sector leaseholders.
63. The protection period recognises that commercial property landlords may in cases of rental arrears be deprived of an income stream for the period and will be delayed in gaining possession of the property to sell or put to alternative use – it is aimed at being a proportionate response to both parties by providing three months' grace to those that are struggling.
64. The provisions in the Bill relating to a moratorium for claiming forfeiture of a lease for non-payment of rent are intended to be a temporary measure and accordingly will only apply for a limited period, from Royal Assent currently envisaged to be on 24 March until 30 June 2020. Given the extraordinary circumstances created by the coronavirus pandemic it may become necessary to extend the relevant period and therefore the government wishes to reserve a power to do so if the circumstances require it. As things stand a period of 3 months' moratorium is considered to be the appropriate period. However, for the same reasons as the government is laying the amendment the government wishes to reserve a power to extend that 3 month period if the pandemic – and the disruption caused to businesses' income streams – remains. It is not possible to say how long current measures to tackle the pandemic will need to remain in place and therefore it is not possible to say how long the economic impact will affect the ability of tenants to pay rent.

Justification for the procedure

65. In the government's view the negative procedure would give Parliament the right level of scrutiny of these regulations. The government wishes to retain the ability to extend the period for which the provisions will apply beyond 30 June 2020 should circumstances require it. Given the reasons for introducing these provisions, and the surrounding circumstances, the government considers that the use of the negative procedure is justified. This will allow Regulations to be made and laid at pace as circumstances dictate. It will also allow the Regulations to be made whilst Parliament is in recess. Given the extraordinary and unpredictable circumstances created by the coronavirus pandemic, the government considers it necessary to ensure the ability to act in response to moving events in the most agile and speedy manner.

66. The provisions to which the powers relate are subject to the reporting requirements of section 83 of the Bill and to the sunset provisions of the Bill so can only be exercised for a finite period of time.

New Clause 31: Business tenancies: protection from forfeiture – Northern Ireland

Power conferred on: Department of Finance of Northern Ireland

Power exercisable by: Regulations

Parliamentary procedure: Negative resolution

67. The Schedule makes provision for a three month moratorium on the ability of landlords of commercial properties to exercise any right of forfeiture that they may have due to the non payment of rent by tenants. The provision simply delays the right of forfeiture; it does not otherwise impinge on a landlord's right to claim forfeiture or recover rent at the end of that period. The period of time for the moratorium runs from Royal Assent to 30 June 2020 ("the relevant period"). Subsection (7) gives the Department of Finance power to extend the relevant period (on one or more occasions).

Justification of delegated powers in this Bill

68. The provisions in the Bill relating to a moratorium for claiming forfeiture of a lease are intended to be a temporary measure and accordingly will only apply for a limited period, from Royal Assent currently envisaged to be from 24 March until 30 June 2020. Given the extraordinary circumstances created by the coronavirus pandemic it may become necessary to extend the relevant period and therefore the Department of Finance wishes to reserve a power to do so if the circumstances require it. As things stand a period of 3 months' moratorium is considered to be the appropriate period. However, for the same reasons the Department of Finance wishes to reserve a power to extend that 3 month period to adapt to changing circumstances. It is not possible to say how long current measures to tackle the pandemic will need to remain in place and therefore it is not possible to say how long the economic impact will affect the ability of tenants to pay rent.

Justification of the scrutiny of the power

69. In the government's view, the negative procedure would give the Northern Ireland Assembly the right level of scrutiny of these regulations. The Department of Finance wishes to retain the ability to extend the period for which the provisions will apply beyond 30 June 2020 should circumstances require it. Given the reasons for introducing these provisions, and the surrounding circumstances, the government considers that the use of the negative procedure is justified. This will allow Regulations to be made and laid at pace as circumstances dictate. It will also allow the Regulations to be made whilst the Northern Ireland Assembly is in recess. Given the extraordinary and unpredictable circumstances created by the coronavirus pandemic, the Department of Finance considers it necessary to ensure the ability to act in response to moving events in the most agile and speedy manner.

70. The provisions to which the powers relate are subject to the reporting requirements of section 83 of the Bill and to the sunset provisions of the Bill so can only be exercised for a finite period of time.

Department for Health and Social Care

23 March 2020