

CVDR/S6/22/8/3

COVID-19 Recovery Committee

8th Meeting, 2022 (Session 6), Thursday 10
March 2022

Coronavirus (Recovery and Reform) (Scotland) Bill - Stage 1 scrutiny

Introduction

1. At this meeting, the Committee will take evidence on Coronavirus (Recovery and Reform) (Scotland) Bill at Stage 1 from the following witnesses—

Named person nomination contained in Clause 28 (Part 3) of the Bill

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

2. The Committee has received written submissions from the witnesses, which are provided in **Annexe A**:

- Mental Welfare Commission for Scotland's written submission
- The Royal College of Psychiatrists' written submission

The Bill

3. The [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill](#) is a Scottish Government bill that was introduced on Tuesday, 25 January 2022 by John Swinney, Deputy First Minister and Cabinet Secretary for COVID Recovery. The Bill was accompanied by a [Policy Memorandum](#) (PM), [Explanatory Notes](#) (EN), and a [Financial Memorandum](#) (FM). The Scottish Government also published the following impact assessments—

- [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: business and regulatory impact assessment](#)
- [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: child rights and wellbeing impact assessment](#)

- [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: equalities impact assessment](#)
- [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: fairer Scotland duty impact assessment](#)
- [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill: island communities impact assessment](#)

4. The effect of the Bill is to make permanent some of the time-limited reforms to the delivery of public services that were introduced in response to the COVID-19 pandemic and to extend others. The Scottish Government consulted on the proposals in its consultation paper entitled "[Covid recovery: a consultation on public health, public services and justice system reforms](#)", which was open from 17 August 2021 to 9 November 2021.¹

5. The Policy Memorandum states that the purpose of the Bill is—

“to embed reforms in Scotland’s public services and justice system that, though necessitated by the Covid pandemic, have delivered improvements for service users and improved efficiency. The Bill will also help build resilience against future public health threats. Furthermore, the Bill will continue certain temporary justice system provisions on a longer extension basis as part of the Recover, Renew, Transform (“RRT”²) programme and as a response to the impact of Covid on Scotland’s justice system, most particularly where backlogs have unavoidably built up.”²

6. The Bill is divided into 6 Parts, as follows—

- Part 1: Public health protections (clauses 1 – 4)
- Part 2: Education (clauses 5 – 14)
- Part 3: Public service reform (clauses 15 – 32)
- Part 4: Tenancies (clauses 33 – 37)
- Part 5: Temporary justice measures (clauses 38 – 44)
- Part 6: Final provisions (clauses 45 – 47)

6. This Bill therefore covers a range of policy areas—

- alcohol licensing
- bankruptcy
- civic licensing
- courts, tribunals and parole boards
- criminal justice and proceeds of crime
- education (powers to close educational establishments and ensure continuity of education)
- freedom of information
- legal aid
- named persons nomination
- public health

¹ <https://consult.gov.scot/constitution-and-cabinet/covid-recovery/>.

² Coronavirus (Recovery and Reform) (Scotland) Bill, Policy Memorandum, page 1

- registration of deaths, still-births and live births
- tenancies and evictions
- vaccinations and immunisations

7. The Scottish Parliament's Information Centre (SPICe) has published a [bill briefing](#) on aspects relating to public health, education and the delivery of other public services. This is one of two SPICe briefings on the Bill.

Committee scrutiny

8. As the provisions in the Bill cover a wide range of policy areas, 4 committees are involved in the Stage 1 scrutiny of this Bill. The COVID-19 Recovery Committee is the lead committee on the Bill.³ The Criminal Justice Committee has been designated as a secondary committee and will be considering the civil and criminal justice matters covered in Parts 3 and 5 of the Bill. The Local Government, Housing and Planning Committee has also been designated as a secondary committee and will consider the tenancies provisions included in Part 4 of the Bill. The Education, Children and Young People Committee has an interest in Part 2 of the Bill. Those committees will report to this Committee.

9. To ensure a joined up approach to scrutiny, the committees issued a joint [call for views](#), which included the option of completing a short survey. The short survey has received 3,571 responses to date, and will remain open until Friday, 18 March.

10. The detailed response option for the call for views closed on 25 February 2022 and the submissions received have been [published](#). The Committee has also received requests for extensions and these late submissions will be uploaded, published and circulated to the Committee in due course.

Next steps

11. The Committee will continue to take evidence on the Bill at its meetings on 24 and 31 March 2022 and expects to publish its Stage 1 report after Easter recess.

Committee Clerks March 2022

³ [S6M-03035](#) – Designation of lead Committee.

ANNEXE A

Mental Welfare Commission for Scotland's written submission

We are an independent organisation. We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

Public Services and Justice System Reform

Mental health (Part 3, Clause 28)

Topic P13 (Mental health: named person nomination). The Commission considers that the proposal that removes the need for the person to have their signature witnessed when they agree to become a named person should be extended beyond March 2022 and made permanent.

We hope that this permanent change might further safeguard the rights of people liable to compulsory measures under the Mental Health (Care and Treatment) (Scotland) Act 2003 as it will reduce bureaucratic steps in the appointment of a named person. We have not received any negative comments on the removal of this step.

Royal College of Psychiatrists in Scotland's written submission

The Royal College of Psychiatrists in Scotland is the professional medical body responsible for:

- setting standards and promotes excellence in specialist mental health care
- supporting the psychiatry profession, including our 1,400 members in Scotland
- collective action to improve support, care and treatment for people with mental ill health.

The College aims to:

- improve outcomes for people with severe mental ill health, addictions, intellectual disabilities and autism, and to be among their strongest advocates
- advocate for parity of esteem between physical and mental health care
- project and promote the voice of patients, carers and their organisations, recognising the value of their voice in shaping the care we provide

Our members:

- Provide specialist care for those with moderate to severe mental illness This care can be life-saving and facilitate a tremendous improvement in a person's condition and quality of life.
- This specialist care is both in in-patient and community settings, and takes place alongside and in partnership with multidisciplinary teams from a clinical and non-clinical background

Public Services and Justice System Reform

Mental health (Part 3, Clause 28)

This measure is in reference to the process around which a Named Person is appointed to be engaged with around a person's treatment under the Mental Health (Care & Treatment) (Scotland) Act 2003.

The provision of a witnessed signature was put in place initially to avoid individuals being placed in the position where they became Named Persons unwillingly and without their consent. This was, in theory, to avoid inappropriate advocates for the patient (though our members stress that checks and engagement to confirm they are an appropriate appointment can and does take place regardless).

Our members reflected, though, that the requirement for written witnessed acceptance of the Named Person nomination can be impossible to achieve within an appropriate time frame that does not potentially risk harm to the person needing care, even prior to the pandemic. Examples of this include emergency situations or potentially when nominated Named Persons are living in remote and rural areas. Even where such barriers do not apply, there is inevitably a time delay between the patient's nomination and the witnessed acceptance of nomination that can impact the effectiveness of care and treatment, to the detriment of the patient.

This need for witnessed agreement, has therefore meant that more patients have become subject to compulsory care measures without a Named Person to input, causing a greater risk to their wellbeing. This is particularly so in first-presentation patients, who can be admitted in unpredictable and emergency situations.

As highlighted in the Scottish Government's consultation document, there is not a

comparable situation where a witness is required to certify a person's agreement to participate in this manner. It instead adds an additional layer of bureaucracy that, during the pandemic, has been removed. In doing so, our members experiences has been that more people have been able to call on a named person as a result of removing this barrier, which is to the benefit of the process.

As we have highlighted, the proposal to remove a witnessed signature to become one does not directly limit the level of safeguard for the patient, and is instead focused around verifying the Named Person's identity. Our members reported this takes place regardless of having the formalised process of a witnessed signature.

Our members experiences during the pandemic also did not present a negative consequence from the removal of a witnessed signature, with no reported incidents where a named person has been inappropriately appointed during this period.

Making the removal of this witnessed signature permanent, as supported by a range of organisations in the Scottish Government's initial consultation, makes it much more straightforward to have a Named Person appointed. This benefits the wider process and the upholding of an individual's rights. It is on this basis, with a prioritisation of the patient's rights, we support the proposal.

Ensuring the process for acquiring a named person is more streamlined while not altering the level of safeguard available to them ensures the process is more timely and that such an individual is in place to help promote the patient's rights. This makes mental health services more resilient and person-centred, and we would recommend that Parliament supports this proposal.