

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

SCOTTISH GOVERNMENT CONSULTATION - LEGISLATIVE PROPOSALS TO SUPPORT COVID RECOVERY

REPORT BY CHIEF EXECUTIVE

A. PURPOSE OF REPORT

The purpose of the report is to advise the Council Executive of the Scottish Government consultation on a range of legislative proposals to support COVID recovery, and ask the Council Executive to agree a response.

B. RECOMMENDATIONS

It is recommended that the Council Executive:

1. Note the consultation
2. Agree the proposed response to the consultation

C. SUMMARY OF IMPLICATIONS

I Council Values	Focusing on our customers' needs Making best use of resources Working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Coronavirus Act 2020 Coronavirus (Scotland) Act 2020 Coronavirus (Scotland) (No.2) Act 2020 Coronavirus (Extension and Expiry)(Scotland) Bill
III Implications for Scheme of Delegations to Officers	
IV Impact on performance and performance Indicators	
V Relevance to Single Outcome Agreement	
VI Resources - (Financial, Staffing and Property)	
VII Consideration at PDSP	Partnership and Resources PDSP 1 October 2021
VIII Other consultations	Education, Social Policy, Corporate Services, Planning and Economic Development, Finance and Property Services, and Building and Customer Services.

D. TERMS OF REPORT

D1 Background

The Scottish Government is consulting on a wide range of specific legislative proposals which they think have the potential to support Covid recovery. The consultation is available at <https://www.gov.scot/publications/covid-recovery-consultation-public-services-justice-system-reforms/pages/1/>

This consultation focuses on reviewing the legislative powers that have supported the response to Covid. It begins with discussion of the aims for Covid recovery and ends with an open question, to invite comments on the action that respondents think is required to support a fair, safe and secure recovery.

The consultation invites views on specific legislative proposals that have the potential to support Covid recovery in the following areas

- Proposals for greater public health resilience, to protect Scotland against future public health threats;
- Proposals for public services and justice system reform, to ensure that the benefits of practical modernisations put in place during the pandemic are maintained; and
- Proposals to respond to the impact of Covid in the justice system specifically, where backlogs have unavoidably built up.

D2 Consultation Response

A draft response is in Appendix 1 to the report.

Due to the wide-ranging nature of the consultation, input to the response was sought from Education, Social Policy, Corporate Services, Planning and Economic Development, Finance and Property Services, and Building and Customer Services.

The deadline for the submission of a response to the consultation is 9 November.

D3 Consideration at the Partnership and Resources PDSP

A comment was made at the PDSP that all Covid emergency legislation should cease in March 2022, and any requirement for replacement legislation should be done in the usual and proper manner.

D4 Next steps in the process

Following the closing date, all responses will be analysed and considered along with any other available evidence and an analysis report will also be made available

E. CONCLUSION

The Scottish Government is consulting on legislative proposals to support COVID recovery, and the Council Executive is asked to agree a response

F. BACKGROUND REFERENCES

Partnership and Resources PDSP 1 October 2021 - Scottish Government Consultation
- Legislative Proposals To Support Covid Recovery

Appendices/Attachments: 1. Consultation Response

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Name of CMT Member: Graham Hope, Chief Executive,

Date: 26 October 2021

Appendix 1

Covid recovery: a consultation on public health, services, and justice system reforms



Scottish Government
Riaghaltas na h-Alba
gov.scot

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

☐ Individual

☒ Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

☒ Publish response with name

☐ Publish response only (without name)

☐ Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

☒ Yes

☐ No

Questionnaire

Chapter 2: Public health resilience

Question 1: Education: powers to make directions to close educational establishments, and to ensure continuity of education

It is proposed that the provisions for Topic H1 (Education: powers to make directions to close educational establishments, and to ensure continuity of education) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic H1 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic H1 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic H1 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic H1, or the proposal for permanence, please write them below.

The proposal is to make permanent provisions in the UK Act that relate to education, namely the duty on all operators of educational establishments to have regard to the advice of the Chief Medical Officer for Scotland ("CMO"), and the powers for Scottish Ministers to give directions in relation to the closure of educational establishments and the continuity of educational provision during the remainder of the current pandemic and future pandemics.

This proposal would take some powers away from Local Authorities in certain limited circumstances. Decisions regarding closure of all schools across the country, and requiring the continuation of services (for example free meals, provision for vulnerable children and young people etc) through alternative means may be best made by a central government with direct access to scientific and clinical advice, typically unavailable to a local authority.

Local authorities would retain discretion to close a school, or vary service provision in response to local circumstances, but could not disregard an order to close, or an order to continue services in a particular alternative way.

National decision making removes the prospect of a postcode lottery in relation to service provision, and the pressure local authorities may come under in relation to service provision in an emergency situation in the absence of clear national direction.

Permanent powers would remove the need for time to be taken up in legislation and communication in future emergencies, as all stakeholders would be aware of the powers, and the prospect of Direction.

Question 2: Power to make public health protection regulations

It is proposed that the provisions for Topic H2 (Power to make public health protection regulations) as described will be made permanent. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic H2 should be extended beyond March 2022 and made permanent

- ☒ I think the provisions for Topic H2 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic H2 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic H2, or the proposal for permanence, please write them below.

The provisions for Topic H2 should only extend beyond March 2022 for COVID control if there continues to be a serious concern regarding public health. The provisions should not be made permanent and not be extended to other infections and contamination. It is concerning that no mention is made in the information regarding the provisions which already exist within the Public Health (Scotland) Act 2008 for Scottish Ministers, Local Authorities and Health Boards in protecting and controlling public health. Significant powers already exist for situations which are clearly defined as significant threats to human health in this legislation.

It is concerning that no further clarification is given in terms of what Scottish Government consider are the infections or contamination they would seek to control. It is accepted that it is not possible to specify where this may involve new infections, but it is concerning that the proposals potentially give scope to government to impose restrictions on healthy individuals where previously public health legislation only required control of infected or contaminated individuals. It is therefore difficult to agree to providing new powers to government where there is no clarity or details to understand in what situation they may seek to use these.

It would be concerning for government to be able to decide that infections we have lived with and controlled by existing public health measures could subsequently be defined by them differently and require wide spread restrictions as were put in place for COVID. This would be a questionable burden on society and those tasked with monitoring and enforcing restrictions.

There is no need for permanence as governments were able to introduce legislation promptly in response to the COVID pandemic. If the provision is being established only for the purposes of such situations then it would seem appropriate to address concerns with specific legislation only when necessary. The machinery of government seemed to manage this during COVID.

It is also important to be able to maintain appropriate scrutiny of restrictions and regulations being proposed for other public health concerns. The level of information in this consultation is insufficient to allow this, and experience of the COVID pandemic response is that confusion and contradiction between legislation, guidance, and scientific evidence to support regulatory controls was a challenge throughout. It would be completely inappropriate to support permanent powers for government until appropriate lessons have been learned from the COVID regulatory response to ensure that any proposals for these new powers are properly considered and evidenced.

Question 3: Vaccinations and immunisations

It is proposed that the provisions for Topic H3 (Vaccinations and immunisations) as described will be made permanent. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic H3 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic H3 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic H3 should be extended or made permanent

- ☐ Unsure
- ☒ I have no view

If you have any comments on either the provisions for Topic H3, or the proposal for permanence, please write them below.

This is a question for health professionals

Question 4: Virtual public meetings under the Schools (Consultation) (Scotland) Act 2010

It is proposed that new permanent legislative provisions for Topic H4 (Virtual public meetings under the Schools (Consultation) (Scotland) Act 2010) as described will be developed.

Which of the following best describes what you think about this?

- ☒ I think the proposed provisions for Topic H4 should be developed
- ☐ I do not think the proposed provisions for Topic H4 should be developed
- ☐ Unsure
- ☐ I have no view

If you have any comments on the proposed provisions for Topic H4 please write them below.

Increasing the use of digital channels to enable service delivery should be supported with the caveat that digital engagement doesn't become the only means of engagement.

Greater flexibility with regard to holding virtual public meetings during normal times would be welcome. In normal times we have found attendance at public consultation meetings to vary considerably. Low turn-outs don't always reflect the level of interest but their ability to attend. Recent virtual consultations involving primary and ASN schools has often enabled both parents to attend without having to make child care and transport arrangements.

Chapter 3: Public services & justice system

Question 5: Alcohol licensing remote hearings

It is proposed that the provisions for Topic P1 (Alcohol licensing remote hearings) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P1 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P1 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P1 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P1, or the proposal for permanence, please write them below.

Increasing the use of digital channels to enable service delivery, such as virtual licensing meetings should be supported with the caveat that digital engagement doesn't become the only means of engagement.

Question 6: Bankruptcy: debt level that enables creditors to pursue the bankruptcy of a debtor through the courts

It is proposed that the provisions for Topic P2 (Bankruptcy: debt level that enables creditors to pursue the bankruptcy of a debtor through the courts) as described will be made permanent. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic P2 should be extended beyond March 2022 and made permanent (i.e. with a creditor petition debt level of £10,000 as per the current provisions)
- ☒ I think the provisions for Topic P2 should be extended beyond March 2022 and made permanent with an amended creditor petition debt level of £5,000
- ☐ I think the provisions for Topic P2 should be extended beyond March 2022 (i.e. with a creditor petition debt level of £10,000 as per the current provisions), but not made permanent
- ☐ I think the provisions for Topic P2 should be extended beyond March 2022 with an amended creditor petition debt level of £5,000, but not made permanent
- ☐ I do not think the provisions for Topic P2 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P2, or the proposal for permanence, please write them below.

A permanently amended creditor petition debt level of £5,000 will achieve a more balanced approach for both creditors and debtors beyond March 2022

Question 7: Bankruptcy: electronic service of documents

It is proposed that the provisions for Topic P3 (Bankruptcy: electronic service of documents) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P3 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P3 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P3 should be extended or made permanent

- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P3, or the proposal for permanence, please write them below.

The electronic service of documents provides for a more efficient process that ensures a quicker delivery of information to recipients and reduces administration costs

Question 8:

It is proposed that the provisions for Topic P4 (Bankruptcy: moratoriums on diligence) as described will be made permanent. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic P4 should be extended beyond March 2022 and made permanent (i.e. with a moratorium period of 6 months as per the current provisions)
- ☒ I think the provisions for Topic P4 should be extended beyond March 2022 and made permanent with an amended moratorium period of 12 weeks
- ☐ I think the provisions for Topic P4 should be extended beyond March 2022 (i.e. with a moratorium period of 6 months as per the current provisions), but not made permanent
- ☐ I think the provisions for Topic P4 should be extended beyond March 2022 with an amended moratorium period of 12 weeks, but not made permanent
- ☐ I do not think the provisions for Topic P4 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P4, or the proposal for permanence, please write them below.

An amended 12 week moratorium period will ensure that individuals will remain focused and engaged with advice services in finding a solution to their debt problems.

Question 9: Bankruptcy: virtual meetings of creditors

It is proposed that the provisions for Topic P5 (Bankruptcy: virtual meetings of creditors) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P5 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P5 should be extended beyond March 2022, but not made permanent

- ☐ I do not think the provisions for Topic P5 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P5, or the proposal for permanence, please write them below.

Allowing virtual meetings of creditors to be made permanent will improve efficiency and reduce costs which in turn will potentially increase the returns available to creditors.

Question 10: Care services: giving of notices by the Care Inspectorate

It is proposed that the provisions for Topic P6 (Care services: giving of notices by the Care Inspectorate) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P6 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P6 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P6 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P6, or the proposal for permanence, please write them below.

Increasing the use of digital channels to enable service delivery should be supported

Question 11: Civic government licensing remote hearings

It is proposed that the provisions for Topic P7 (Civic government licensing remote hearings) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P7 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P7 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P7 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P7, or the proposal for permanence, please write them below.

Increasing the use of digital channels to enable service delivery should be supported with the caveat that digital engagement doesn't become the only means of engagement.

Question 12: Courts: intimation, etc. of documents

It is proposed that the provisions for Topic P8 (Courts: intimation, etc. of documents) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P8 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P8 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P8 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P8, or the proposal for permanence, please write them below.

Increasing the use of digital channels to enable service delivery should be supported

Question 13: Criminal justice: arrangements for the custody of persons detained at police stations

It is proposed that the provisions for Topic P9 (Criminal justice: arrangements for the custody of persons detained at police stations) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P9 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P9 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P9 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P9, or the proposal for permanence, please write them below.

This proposal seems to be in line with the modernising agenda for the justice system.

Question 14: Freedom of Information: giving notice electronically

It is proposed that the provisions for Topic P10 (Freedom of Information: giving notice electronically) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P10 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P10 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P10 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P10, or the proposal for permanence, please write them below.

Increasing the use of digital channels to enable service delivery should be supported with the caveat that digital engagement doesn't become the only means of engagement.

Question 15: Legal aid

It is proposed that the provisions for Topic P11 (Legal aid) as described will be made permanent. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic P11 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P11 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P11 should be extended or made permanent
- ☐ Unsure
- ☒ I have no view

If you have any comments on either the provisions for Topic P11, or the proposal for permanence, please write them below.

This is a question for providers of Legal Aid

Question 16: Legal writings etc.

It is proposed that the provisions for Topic P12 (Legal writings etc.) as described will be made permanent. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic P12 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P12 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P12 should be extended or made permanent

- ☒ Unsure
☐ I have no view

If you have any comments on either the provisions for Topic P12, or the proposal for permanence, please write them below.

Increasing the use of digital channels to enable service delivery should be supported

Question 17: Mental health: named person nomination

It is proposed that the provisions for Topic P13 (Mental health: named person nomination) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P13 should be extended beyond March 2022 and made permanent
☐ I think the provisions for Topic P13 should be extended beyond March 2022, but not made permanent
☐ I do not think the provisions for Topic P13 should be extended or made permanent
☐ Unsure
☐ I have no view

If you have any comments on either the provisions for Topic P13, or the proposal for permanence, please write them below.

It is sensible for this to be made permanent as there have been no issues with this from a West Lothian Council perspective during the pandemic.

Question 18: Parole Board: delegation

It is proposed that the provisions for Topic P14 (Parole Board: delegation) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P14 should be extended beyond March 2022 and made permanent
☐ I think the provisions for Topic P14 should be extended beyond March 2022, but not made permanent
☐ I do not think the provisions for Topic P14 should be extended or made permanent
☐ Unsure
☐ I have no view

If you have any comments on either the provisions for Topic P14, or the proposal for permanence, please write them below.

This would appear to be pragmatic and allow contingency for the Parole Board to continue to operate.

Question 19: Parole Board: live link

It is proposed that the provisions for Topic P15 (Parole Board: live link) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P15 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P15 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P15 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P15, or the proposal for permanence, please write them below.

This would appear to be a sensible measure and allow Parole boards to become more efficient.

Question 20: Remote registration of deaths and still-births

It is proposed that the provisions for Topic P16 (Remote registration of deaths and still-births) as described will be made permanent. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic P16 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P16 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic P16 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P16, or the proposal for permanence, please write them below.

Remote death registrations are the preferred option being much more streamlined. Previously the MCCD (death certificate) would be given to the family for them to make an appointment to come into the office to register the death where now it is scanned and emailed direct from the doctor or hospital with the informants contact details. The registration office can then arrange a convenient time to telephone the informant where the registration can be done in the comfort of their own home. All completed forms to the Funeral Director and Procurator Fiscal are scanned and emailed direct. With the current

travel restrictions another benefit is that family members who live abroad can be involved in the registration.

Question 21: Remote registration of live births

It is proposed that new permanent legislative provisions for Topic P17 (Remote registration of live births) as described will be developed. Which of the following best describes what you think about this?

- ☐ I think the proposed provisions for Topic P17 should be developed
- ☐ I do not think the proposed provisions for Topic P17 should be developed
- ☒ Unsure
- ☐ I have no view

If you have any comments on the proposed provisions for Topic P17 please write them below.

There is a concern where the parents of the child are not married to each other. Currently both parents would need to attend the office to sign the register page where a hard signature of both would be produced. If a birth was registered remotely it would only produce a transcription of both signatures and would not stand up in a court of law.

Question 22: Tenancies: protection against eviction (discretionary grounds of eviction); and pre-action requirements for eviction proceedings on ground of rent arrears

It is proposed that the provisions for Topic P18 (Tenancies: protection against eviction (discretionary grounds of eviction); and pre-action requirements for eviction proceedings on ground of rent arrears) as described will be made permanent. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic P18 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic P18 should be extended beyond March 2022 and made permanent, but only to the extent that rent arrears should continue to be a discretionary eviction ground – with all other eviction grounds returning to their pre-pandemic status
- ☐ I think the provisions for Topic P18 should be extended beyond March 2022, but not made permanent
- ☐ I think the provisions for Topic P18 should be extended beyond March 2022, but not made permanent, but only to the extent that rent arrears should continue to be a discretionary eviction ground – with all other eviction grounds returning to their pre-pandemic status
- ☒ I do not think the provisions for Topic P18 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic P18, or the proposal for

permanence, please write them below.

The extension to the Pre Action Requirement (PAR) notice period and restricting Evictions during the Covid19 Pandemic was a reasonable and practical decision as the country faced significant and serious public health crisis.

During this time it provided Registered Social Landlords an extended period of time to support and engage with tenants to sustain their tenancy during the pandemic and lockdown measures to keep people safe. The temporary provisions continued to strike an appropriate balance between the tenant and the landlord. However, to extend and make the provisions permanent is a concern.

We find that the use of Pre Action Requirements is one of the tools available that can prevent arrears escalating and becoming unmanageable for the tenant. In West Lothian, a significant amount of engagement, support, welfare and money advice is offered to our tenants who face financial difficulties in meeting their rental payments. For those tenants who engage, we work with the tenant to reach a sustainable repayment plan even where high level of debt has arisen and we mitigate escalation to court stage. Unfortunately, for some tenants, progressing with rent arrears recovery processes is necessary and often only when we reach court stage that a tenant's behaviour changes and we have engagement. Eviction in West Lothian is very much the last resort and each case is reviewed on an individual basis and if we can prevent Eviction we will.

Therefore, there has to be a balance as we also have to think about all the tenants who do pay their rent regularly, who update the circumstances to receive the assistance with their housing costs either Housing Benefit or Universal Credit. A concern about extending the notice period of a PAR is leading to much higher rent arrears for that individual tenant and also what message it sends to Tenants about being a tenant and paying rent is integral to that landlord /tenant relationship.

Chapter 4: Responding to the impact of COVID-19 in the justice system

Question 23: Courts and tribunals: conduct of business by electronic means

It is proposed that the provisions for Topic J1 (Courts and tribunals: conduct of business by electronic means) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J1 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic J1 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J1 should be extended or made permanent
- ☐ Unsure
- ☒ I have no view

If you have any comments on either the provisions for Topic J1, or the proposal for extension beyond March 2022, please write them below.

This is a question for the Scottish Court and Tribunal Service

Question 24: Courts and tribunals: virtual attendance

It is proposed that the provisions for Topic J2 (Courts and tribunals: virtual attendance) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J2 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic J2 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J2 should be extended or made permanent
- ☐ Unsure
- ☒ I have no view

If you have any comments on either the provisions for Topic J2, or the proposal for extension beyond March 2022, please write them below.

This is a question for the Scottish Court and Tribunal Service

Question 25: Criminal justice: early release of prisoners

It is proposed that the provisions for Topic J3 (Criminal justice: early release of prisoners) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic J3 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic J3 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J3 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J3, or the proposal for extension beyond March 2022, please write them below.

This provision was utilised to a limited extent in the early part of the pandemic and caused no significant issues. There is an opportunity to extend this further. A wider range of prisoners could be released subject to multi agency discussion.

Question 26: Criminal justice: expiry of undertaking

It is proposed that the provisions for Topic J4 (Criminal justice: expiry of undertaking) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J4 should be extended beyond March 2022 and made permanent
- ☒ I think the provisions for Topic J4 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J4 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J4, or the proposal for extension beyond March 2022, please write them below.

This provision appears to be particularly relevant to COVID 19 and therefore should remain a time limited provision

Question 27: Criminal justice: fiscal fines

It is proposed that the provisions for Topic J5 (Criminal justice: fiscal fines) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic J5 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic J5 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J5 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J5, or the proposal for extension beyond March 2022, please write them below.

This appears to be a proportionate measure and would support efforts to limit unnecessary prosecutions. It can be used as a measure alongside other similar disposals such as Diversion from Prosecution.

Question 28: Criminal justice: national court for cases beginning with an appearance from custody

It is proposed that the provisions for Topic J6 (Criminal justice: national court for cases beginning with an appearance from custody) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☒ I think the provisions for Topic J6 should be extended beyond March 2022 and made permanent
- ☐ I think the provisions for Topic J6 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J6 should be extended or made permanent

- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J6, or the proposal for extension beyond March 2022, please write them below.

Whilst this is predominantly a question for the Scottish Court and Tribunal Service, the measure appears to enable more efficient use of resources for the SCTS and for other agencies.

Question 29: Criminal justice: time limits - relating to the time limit on summary-only cases at section 136 of the Criminal Procedure (Scotland) Act 1995 (1995 Act)

It is proposed that the provisions for Topic J7(i) (relating to the time limit on summary-only cases at section 136 of the 1995 Act (Criminal justice: time limits)) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J7(i) should be extended beyond March 2022 and made permanent
- ☒ I think the provisions for Topic J7(i) should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J7(i) should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J7(i), or the proposal for extension beyond March 2022, please write them below.

This is a complex area. A balance needs to be found between the administration of justice for both the victim and the accused person. There are also significant pressures on prisons. A permanent extension would not seem proportionate at this point in time but extending them on a temporary basis would seem sensible.

Question 30: Criminal justice: time limits - remand time limits at section 65(4) and section 147(1) of the 1995 Act

It is proposed that the provisions for Topic J7(ii) (remand time limits at section 65(4) and section 147(1) of the 1995 Act (Criminal justice: time limits)) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J7(ii) should be extended beyond March 2022 and made permanent
- ☒ I think the provisions for Topic J7(ii) should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J7(ii) should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J7(ii), or the proposal for extension beyond March 2022, please write them below.

There would be some concern that extending time on remand would have a detrimental impact on the prison system. Any extension should therefore be time limited.

Question 31: Criminal justice: time limits - extending time limits relating to the maximum time between first appearance on petition and the first diet/preliminary hearing and commencement of the trial at section 65(1) of the 1995 Act

It is proposed that the provisions for Topic J7(iii) (extending time limits relating to the maximum time between first appearance on petition and the first diet/preliminary hearing and commencement of the trial at section 65(1) of the 1995 Act (Criminal justice: time limits)) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J7(iii) should be extended beyond March 2022 and made permanent
- ☒ I think the provisions for Topic J7(iii) should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J7(iii) should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J7(iii), or the proposal for extension beyond March 2022, please write them below.

Any extension should be limited in this case.

Question 32: Criminal justice: time limits - removing time limits on the length of individual adjournments for inquiries

It is proposed that the provisions for Topic J7(iv) (removing time limits on the length of individual adjournments for inquiries (Criminal justice: time limits)) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J7(iv) should be extended beyond March 2022 and made permanent
- ☒ I think the provisions for Topic J7(iv) should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J7(iv) should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J7(iv), or the proposal for extension beyond March 2022, please write them below.

Any extension should be limited in this case.

Question 33: Proceeds of crime

It is proposed that the provisions for Topic J8 (Proceeds of crime) as described will be extended beyond March 2022. Which of the following best describes what you think about this?

- ☐ I think the provisions for Topic J8 should be extended beyond March 2022 and made permanent
- ☒ I think the provisions for Topic J8 should be extended beyond March 2022, but not made permanent
- ☐ I do not think the provisions for Topic J8 should be extended or made permanent
- ☐ Unsure
- ☐ I have no view

If you have any comments on either the provisions for Topic J8, or the proposal for extension beyond March 2022, please write them below.

It seems reasonable that individuals subject to confiscation orders have more time to pay but this should be limited to a time where COVID 19 is impacting.

Chapter 5: Final questions

Question 34: Covid recovery

To support the key three themes for Covid recovery as described, do you have any proposals for legislation which goes beyond or is different to the consultation proposals in Chapters 2 to 4?

- ☐ Yes
- ☒ No
- ☐ Unsure
- ☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to which of the three themes are of particular interest to you.

Questions 35 to 39: Do you have any comments on potential impacts of the proposals in Chapters 2 to 4 of this paper, not sufficiently covered by the previous impact assessments, on:

Question 35: Business and regulatory impact assessment

- ☐ Yes I have comments on potential impacts
- ☒ No
- ☐ Unsure
- ☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

Question 36: Child rights and wellbeing impact assessment

- ☒ Yes I have comments on potential impacts
- ☐ No
- ☐ Unsure
- ☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

As the Child Rights and Wellbeing Impact Assessment is a mechanism to identify, research, analyse and record the anticipated impact of any proposed law, policy or measure on children’s human rights and wellbeing as rights recognised in the UNCRC’, it may have an impact on Public Services and the Justice System when it is deemed that rights are not being adhered to and this leads to prosecution.

In terms of Public Health Resilience any specific requirements or imposed public health protection regulations would need to ensure all children have a right to the highest attainable standard of health, and to health care services that help them to attain this.

Any changes in policy directly impacting on children would need to ensure that children are provided with the opportunity to be heard, either directly or through a representative or appropriate body.

Question 37: Equality impact assessment

- ☒ Yes I have comments on potential impacts
- ☐ No
- ☐ Unsure
- ☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

Increasing use of digital channels should be supported, but digital channels should not become the only means of engagement so as to ensure no-one is excluded

Question 38: Socio-economic equality impact assessment (the Fairer Scotland Duty)

- ☒ Yes I have comments on potential impacts
☐ No
☐ Unsure
☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

Increasing use of digital channels should be supported, but digital channels should not become the only means of engagement so as to ensure no-one is excluded

Question 39: Human rights

- ☐ Yes I have comments on potential impacts
☒ No
☐ Unsure
☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

Question 40: Data protection impact assessment

Do you have any comments on potential impacts of the proposals in Chapters 2 to 4 of this paper on data protection and privacy (the handling of personal data)?

- ☐ Yes I have comments on potential impacts
☒ No
☐ Unsure
☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

Question 41: Island communities impact assessment

Do you have any comments on potential impacts of the proposals in Chapters 2 to 4 of this paper on people in rural or island communities?

- ☐ Yes I have comments on potential impacts
- ☐ No
- ☐ Unsure
- ☒ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

Question 42: Strategic environmental assessment

Do you have any comments on potential impacts of the proposals in Chapters 2 to 4 of this paper on the environment?

- ☐ Yes I have comments on potential impacts
- ☒ No
- ☐ Unsure
- ☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

Question 43: Financial Memorandum

Do you have any comments on the financial implications of the proposals in Chapters 2 to 4 of this consultation paper for public bodies, individuals and businesses, having regard to the Financial Memorandum for the Extension and Expiry Bill?

- ☒ Yes I have comments on potential impacts
- ☐ No
- ☐ Unsure
- ☐ I have no view

If you have selected “Yes” please write your comments below. It would be helpful if you could refer to topics of particular interest to you with their topic codes.

The pandemic and the response has shown that financial impacts may be difficult to quantify in advance. Alongside increasing demands on service provision in many areas, increasing costs and also reducing levels of income generated in a number of areas means it is essential that vital public services are funded adequately by government during the recovery period from the pandemic