Chapter 2 - Public health resilience

Question 1 Education: powers to make directions to close educational establishments in order to reduce the spread of infection within and to ensure the continuity of education during pandemics

I do not think the provisions for Topic H1 should be extended or made permanent

If you have any comments on either the provisions for Topic H1 (Education: powers to make directions to close educational establishments, and to ensure continuity of education) or the proposal for permanence, please write them in the box below.

These are extensive powers that could be re-enacted in the event of a future emergency, with adjustments to reflect the nature and circumstances of that emergency. We consider this would be preferable to making the provisions permanent.

While we do not think the provisions should be made permanent or extended at the present stage, we note that there is the possibility to extend the provisions until September 2022. However, if that is to be done, then this should be the result of an assessment and decision based on the circumstances closer to March 2022.

Question 2 Power to make public health protection regulations

I do not think the provisions for Topic H2 should be extended or made permanent

If you have any comments on either the provisions for Topic H2 (Power to make public health protection regulations) or the proposal for permanence, please write them in the box below.

It is too soon to say whether it should be extended beyond March 2022 for Covid-19 purposes. We are somewhat dubious about making the provisions permanent. It may be preferable to enact future legislation to deal with the relevant emergency, rather than having general provisions that are not appropriate for that situation. We note that there is reference to the position in England and Wales; however, despite pre-existing provisions in the Public Health (Control of Disease) Act 1984, it was deemed necessary to enact new legislation to deal with the particular circumstances of the Covid-19 pandemic.

Question 3 Vaccinations and immunisations

I think the provisions for Topic H3 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic H3 (Vaccinations and immunisations) or the proposal for permanence, please write them in the box below.

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

I think the proposed provisions for Topic H4 should be developed

If you have any comments on the provisions for Topic H4 (Virtual public meetings under the Schools (Consultation) (Scotland) Act 2010) please write them in the box below.

The proposals should include provision for those who are unwilling or unable to attend virtual public meetings, whether due to technological issues or otherwise.

Chapter 3 - Public services and justice system reform

Question 5 Alcohol licensing remote hearings

I do not think the provisions for Topic P1 should be extended or made permanent

If you have any comments on either the provisions for Topic P1 (Alcohol licensing remote hearings) or the proposal for permanence, please write them in the box below.

If a licensing board makes a decision about a hearing being held remotely or in person, a participant should have the ability to challenge the decision. In addition, in relation to the circumstances that a licensing board must consider in making a determination, it should take account of the views of participants.

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

I do not think the provisions for Topic P2 should be extended or made permanent
If you have any comments on either the provisions for Topic P2 (Bankruptcy: debt level that enables creditors to pursue the bankruptcy of a debtor through the courts) or the proposal for permanence, please write them in the box below:

The box selected for this question is subject to the following comments.

We agree that there might be a case for extending the provisions beyond March 2022 with an amended debt level (but that is a decision that should be taken closer to March 2022). We are hesitant about making any alteration to the figure on a permanent basis without awaiting the outcome of the ongoing review of Scotland's debt solutions. We note that the statistics published for the purposes of the review show that increasing the level to £5,000 would affect a relatively small number of creditor petitions; however, increasing it to £10,000 would affect a substantial number of such petitions. Consequently, we would not approve an uplift to £10,000. The ability of a creditor to petition for sequestration is not only important for the creditor regarding recovery of their debt but also limits the possibility of the debtor continuing to amass debts that may be unsustainable.

Question 7 Bankruptcy: electronic service of documents

I think the provisions for Topic P3 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P3 (Bankruptcy: electronic service of documents) or the proposal for permanence, please write them in the box below:

Question 8 Bankruptcy: moratoriums on diligence

I do not think the provisions for Topic P4 should be extended or made permanent

If you have any comments on either the provisions for Topic P4 (Bankruptcy: moratoriums on diligence) or the proposal for permanence, please write them in the box below:

The box selected above is subject to the following comments.

We consider that there may be a case for the extension of the moratorium period on diligence (in Part 15 of the Bankruptcy (Scotland) Act 2016) from the ‘normal’ period of 6 weeks and/or for making that permanent. However, any such change should await the outcome of the ongoing review mentioned above. This should take into account evidence regarding the effects of the extension of the moratorium period. On balance, we consider a period of 6 months would be too long and does not strike a fair balance between the debtor and their creditors.

Question 9 Bankruptcy: virtual meetings of creditors

I think the provisions for Topic P5 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P5 (Bankruptcy: virtual meetings of creditors) or the proposal for permanence, please write them in the box below:

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

I think the provisions for Topic P6 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P6 (Care services: giving of notices by the Care Inspectorate) or the proposal for permanence, please write them in the box below:

Question 11 Civic government licensing remote hearings

I think the provisions for Topic P7 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P7 (Civic government licensing remote hearings) or the proposal for permanence, please write them in the box below:

Our response here is subject to the same points as were made in our answer to question 5 on alcohol licensing.

Question 12 Courts: intimation, etc. of documents

I think the provisions for Topic P8 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P8 (Courts: intimation, etc. of documents) or the proposal for permanence, please write them in the box below:

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

Unsure

If you have any comments on either the provisions for Topic P9 (Criminal justice: arrangements for the custody of persons detained at police stations) or the proposal for permanence, please write them in the box below:

Question 14 Freedom of Information: giving notice electronically
I think the provisions for Topic P10 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P10 (Freedom of Information: giving notice electronically) or the proposal for permanence, please write them in the box below.

Question 15 Legal aid

I think the provisions for Topic P11 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P11 (Legal aid) or the proposal for permanence, please write them in the box below.

Question 16 Legal writings etc

I think the provisions for Topic P12 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P12 (Legal writings etc.) or the proposal for permanence, please write them in the box below.

This is subject to there being appropriate identity checks.

Question 17 Mental health: named person nomination

I think the provisions for Topic P13 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P13 (Mental health: named person nomination) or the proposal for permanence, please write them in the box below.

Question 18 Parole Board: delegation

I think the provisions for Topic P14 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P14 (Parole Board: delegation) or the proposal for permanence, please write them in the box below.

Question 19 Parole Board: live link

I think the provisions for Topic P15 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P15 (Parole Board: live link) or the proposal for permanence, please write them in the box below.

This should, however, be subject to safeguards, including the ability to challenge a decision to hold a live link hearing, rather than an in-person hearing. The parole board should also take into account the views of participants in deciding whether to hold a live link hearing.

Question 20 Remote registration of deaths and still-births

I think the provisions for Topic P16 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic P16 (Remote registration of deaths and still-births) or the proposal for permanence, please write them in the box below.

Question 21 Remote registration of live births

I think the proposed provisions for Topic P17 should be developed

If you have any comments on the provisions for Topic P17 (Remote registration of live births) please write them in the box below.

The proposals should including safeguards to prevent possible fraud or abuse.

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

I think the provisions for Topic P18 should be extended beyond March 2022, but not made permanent

If you have any comments on either 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) or the proposal for permanence, please write them in the box below.

We agree there is a reasonable argument justifying extension beyond March 2022, given the consequences of Covid-19 and the period required for economic recovery, and the potential effects of this on the personal circumstances of tenants. However, we do not believe the provisions should be made permanent, not least because of the potential resource implications for tribunals as a result of the discretion involved for eviction grounds. Any such changes should await the proposed legislation, the process for which will allow for full consideration of the implications.
Chapter 4 - Responding to the impact of Covid in the justice system

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

I think the provisions for Topic J1 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic J1 (Courts and tribunals: conduct of business by electronic means) or the proposal for extension beyond March 2022, please write them below.

Question 24  Courts and tribunals: virtual attendance

I think the provisions for Topic J2 should be extended beyond March 2022 and made permanent

If you have any comments on either the provisions for Topic J2 (Courts and tribunals: virtual attendance) or the proposal for extension beyond March 2022, please write them below.

Question 25  Criminal justice: early release of prisoners

I do not think the provisions for Topic J3 should be extended or made permanent

If you have any comments on either the provisions for Topic J3 (Criminal justice: early release of prisoners) or the proposal for extension beyond March 2022, please write them below.

This is a wide power which should not be made permanent. Appropriate provisions can be made in response to future circumstances. If it is to be extended this will require to be assessed closer to March 2022.

Question 26  Criminal justice: expiry of undertaking

I do not think the provisions for Topic J4 should be extended or made permanent

If you have any comments on either the provisions for Topic J4 (Criminal justice: expiry of undertaking) or the proposal for extension beyond March 2022, please write them below.

The possibility of extending the provisions should be reviewed nearer the time.

Question 27  Criminal justice: fiscal fines

I think the provisions for Topic J5 should be extended beyond March 2022, but not made permanent

If you have any comments on either the provisions for Topic J5 (Criminal justice: fiscal fines) or the proposal for extension beyond March 2022, please write them below.

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

I think the provisions for Topic J6 should be extended beyond March 2022, but not made permanent

If you have any comments on either the provisions for Topic J6 (Criminal justice: national court for cases beginning with an appearance from custody) or the proposal for extension beyond March 2022, please write them below.

It seems sensible to extend this for now but before it is made permanent it should be subject to proper review and discussion.

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

I think the provisions for Topic J7(i) should be extended beyond March 2022, but not made permanent

If you have any comments on either the provisions for Topic J7(i) (relating to the time limit on summary-only cases at section 136 of the 1995 Act) or the proposal for extension beyond March 2022, please write them below.

It seems sensible to extend this for now but before it is made permanent it should be subject to proper review and discussion.

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

I think the provisions for Topic J7(ii) should be extended beyond March 2022, but not made permanent

If you have any comments on either the provisions for Topic J7(ii) (remand time limits at section 65(4) and section 147(1)) or the proposal for extension beyond March 2022, please write them below.

It seems sensible to extend this for now but before it is made permanent it should be subject to proper review and discussion.

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)
I think the provisions for Topic J7(iii) should be extended beyond March 2022, but not made permanent.

If you have any comments on either 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)) or the proposal for extension beyond March 2022, please write them below:

It seems sensible to extend this for now but before it is made permanent it should be subject to proper review and discussion.

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

I think the provisions for Topic J7(iv) should be extended beyond March 2022, but not made permanent.

If you have any comments on either the provisions for Topic J7(iv) (removing time limits on the length of individual adjournments for inquiries) or the proposal for extension beyond March 2022, please write them below:

It seems sensible to extend this for now but before it is made permanent it should be subject to proper review and discussion.

Question 33 Proceeds of Crime

I think the provisions for Topic J8 should be extended beyond March 2022, but not made permanent.

If you have any comments on either the provisions for Topic J8 (Proceeds of crime) or the proposal for extension beyond March 2022, please write them below:

We think the provisions should be extended beyond March 2022 but not made permanent for the first point (paras 205-206). However, we have some doubts about the appropriateness for the second point (paras 207-208).

Chapter 5 - Final questions

Question 34 General Covid recovery question

Yes

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:

There are various other pieces of legislation that could usefully support recovery following the Covid-19 pandemic. For example, the enactment of the draft Moveable Transactions Bill produced by the Scottish Law Commission (along with their Report on Moveable Transactions (2017)), would support access to finance for individuals and businesses across Scotland. Directly and indirectly, such legislation would help to provide “sustainable, good and green jobs” and may, in some instances, also assist with offering “financial security for low income households”.

More broadly with reference to this consultation, we have concerns about the existence of wide-ranging powers remaining available to the government, which can be used in the event of future emergencies. Such powers may not be appropriate for particular emergencies faced in future and there is likely to be debate about the circumstances in which relevant powers may be properly invoked and used. The experience of Covid-19 shows that it can be relatively straightforward to pass legislation in emergency contexts to deal appropriately with situations encountered.

Impact assessments

Question 35 Business and regulatory impact assessment

No

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

No

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 37 Equality impact assessment

No

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 38 Socio-economic equality impact assessment (the Fairer Scotland Duty)
No
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 39 Human rights
No
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
No
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
No
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
No
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 implications
No
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:

About you

What is your name?

Name: Dr Alisdair MacPherson and Professor Donna McKenzie Skene

What is your email address?

Email: alisdair.macpherson@abdn.ac.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation: We are acting as a working group of the Centre for Scots Law at the University of Aberdeen

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

Publish response with name

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
I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:
Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:
Slightly satisfied

Please enter comments here.: