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# NORTH AYRSHIRE COUNCIL

2<sup>nd</sup> November 2021

## Cabinet

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**Title:** Covid Recovery: A Consultation on public services, justice system and other reforms

**Purpose:** To seek approval of a response to the Scottish Government consultation Covid Recovery: A Consultation on public services, justice system and other reforms

**Recommendation:** That Cabinet:

- Approves the proposed consultation response to the Covid Recovery: A Consultation on public services, justice system and other reforms consultation attached at Appendix 1

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## 1. Executive Summary

1.1 The Scottish Government is consulting on a review of the legislative powers that supported the response to the Covid pandemic. This paper seeks approval for the proposed response to the Scottish Government consultation Covid Recovery: A Consultation on public services, justice system and other reforms. The response highlights that the Council is generally in favour of the proposed modernising reforms but would wish to ensure that there are sufficient safeguards in place for the more wide-reaching power in relation to making public health protection regulations.

## 2. Background

2.1 On 17<sup>th</sup> August 2021, the Scottish Government published a consultation titled "Covid Recovery: A Consultation on public services, justice system and other reforms". The consultation has a main focus on a review of the legislative powers that were used in response to the Covid pandemic. The consultation closes on 9<sup>th</sup> November 2021.

2.2 The proposals contained within the consultation mostly make permanent some of the measures that were put in place temporarily by legislation designed solely to deal with the Covid pandemic but there are some new proposals. Many of the proposed changes could be classed as modernising or increased digitalisation powers, allowing for greater use of technology in how certain matters are carried out. However, the most wide reaching of the proposals is to make permanent public health protection regulations that were initially brought in to deal with the Covid pandemic. During the pandemic, among

other uses, these powers were used to prohibit or limit numbers at gatherings; introduce lockdown measures; and require that face coverings were worn.

2.3 At a meeting of the Council on 8<sup>th</sup> September 2021 it was agreed as follows:

(a) that arrangements be made to enable Members of North Ayrshire Council to discuss and comment on the Scottish government's proposals regarding making Covid powers permanent; and

(b) that a report, reflecting the views of Elected Members expressed at the Members' briefing session, be brought to Cabinet to form the Council's submission to the Scottish Government's consultation.

2.4 A members' briefing was held on 19<sup>th</sup> October 2021. The views of members were that increased modernisation/digitalisation of services is welcomed, the experience of the pandemic having shown it to be an efficient and effective way of working. There was some concern that not everyone would be able to engage with the new digital way of working, whether through not having access to the internet or not being sufficiently computer literate. Therefore, it was considered that options must be retained for accessing the services in a more traditional manner and that initiatives should be promoted to increase people's digital skills.

2.5 Members had concerns regarding the proposed powers to make public health protection regulations. It was acknowledged that these are wide reaching powers that may have an impact on individual liberties. It was considered that care needs to be taken to ensure that there are adequate safeguards to these powers to ensure that their use is necessary, proportionate, time limited and subject to scrutiny and regular review.

2.6 Members' views have been incorporated into the proposed consultation response.

### **3. Proposals**

3.1 It is proposed that Cabinet:

- Approves the proposed consultation response to the Scottish Government consultation "Covid Recovery: A Consultation on public services, justice system and other reforms" at Appendix 1.

### **4. Implications/Socio-economic Duty**

#### **Financial**

4.1 None.

#### **Human Resources**

4.2 None.

#### **Legal**

4.3 None.

### **Equality/Socio-economic**

4.4 None.

### **Environmental and Sustainability**

4.5 Some of the proposals in the consultation would result in remote working solutions thereby reducing the requirement to travel which would in turn have a positive impact on the environment by reducing emissions.

### **Key Priorities**

4.6 Some of the proposals contained in the consultation would lead to modernisation and digitalisation of systems and processes which corresponds with the Council's priority for efficiencies that maximise resources and provide value for money.

### **Community Wealth Building**

4.7 None.

## **5. Consultation**

5.1 The Consultation response has been informed by stakeholder engagement involving Officers and Elected Members.

Aileen Craig  
Head of Service, Democratic Services

For further information please contact **David McDowall, Solicitor**, on **MS Teams**.

### **Background Papers**

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

### Overview

The North Ayrshire Council (“the Council”) welcomes the consultation and the modernising approach which it proposes following on from the lessons learned from, and new procedures adopted during, the current Covid-19 pandemic. In relation to the format of the consultation template, it was felt that this did not allow the Council to express its views fully. Accordingly, we have structured our response on a hybrid basis, using a more general approach to outline our overarching thoughts on the consultation while also responding to the specific questions that it was felt had most relevance to our areas of work. Much of the content of the consultation relating to modernising the criminal justice system is outwith the remit of the Council and accordingly we have no response to make to these sections.

### General Views

Many of the proposals contained within the consultation are welcomed by the Council particularly in the public services and justice system reforms sections. Increased modernisation/digitalisation of services is welcomed and some could argue long overdue. The experience of the pandemic has shown this to be an efficient and effective way of working.

While increased modernisation is welcomed, it must be borne in mind that not all parts of the population that require to access services are equally computer literate. Also, access to technology and good internet services are not universal. While it is advantageous to many to be able to access services in a more digital manner, the option must be retained for accessing the services in a more traditional manner. Those who cannot, or will not, access services electronically cannot and should not be excluded. Initiatives should be promoted to increase people’s digital skills so that those not currently confident in this area can be skilled up so they can also enjoy the benefits of the increased digitalisation.

The Council has concerns around the power to make public health protection regulations. While it can generally be accepted that the pandemic has shown the need for an agile response from government, care should be taken in drafting any such powers to ensure there is not an unacceptable level of interference with people’s rights. Safeguards need to be in place to ensure that any powers are necessary and proportionate. There should be a requirement that any regulations made under this power should only apply for defined periods in relation to specific risks and should be subject to scrutiny and regular review. It is noted that while there was some comment in the consultation on the safeguards in relation to educational closure or continuity directions there was no similar mention of safeguards within the section relating to the health protection regulations. The Council considers such safeguards to be essential and would welcome further detail and discussion on what

safeguards would be put in place in relation to the proposals for public health protection regulations to ensure appropriate scrutiny of the powers and consideration of civil liberties and human rights.

### Specific Topic Responses

The remainder of the response will answer the specific questions from the consultation that the Council felt had most relevance to our areas of work. For the sake of clarity, questions which we did not feel were within our area or where we did not have a view are omitted.

#### **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 Council would be in agreement that the provisions for Topic H1 should be extended beyond March 2022 and made permanent to ensure it includes all educational establishments. The safeguards underpinning these powers are essential. All Scottish Government decisions to use the educational continuity direction making power so far during the pandemic have been done following CMO advice and that level of advice should always be in place as well as the others suggested in the paper.

#### **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.

Please refer to the general comments made at the beginning of this response. The powers contained within these proposals are far reaching and would have implications for civil liberties and could result in future lockdowns, closure of businesses and school closures. There appears to be little, if any, detail in the proposal relating to making future regulations as to what safeguards would be in place regarding these powers or what the circumstances would need to be to trigger them. While it can probably be accepted that the Scottish Government may need powers to deal with any future threats to public health, safeguards relating to the making and exercise of these powers and regulations are essential. Specific provisions for safeguards/review mechanisms and what the trigger mechanisms would be for implementing the powers are required. These should not be powers that are exercised lightly.

#### **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.

The Council believes these provisions should be developed. However, it would be better if the flexibility to hold public meetings virtually applied at all times rather than just during a public health emergency. The pandemic has shown the benefits of virtual meetings.

The Council would also agree with more flexibility around paper copies being made available.

## 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.

#### 1. Discretion to proceed in private

The procedures for the Licensing Board should entitle the Board, on their own motion or on the request of any party, to resolve to hold their proceedings in private, along the lines of the 'Exempt Information' provisions in Local Government (Scotland) Act 1973, Schedule 7A. This would involve amendment of the Licensing (Scotland) Act 2005, Schedule 1, Paragraph 12 ("Proceedings"). There should be an amendment of Paragraph 13 ("Validity of proceedings"), so that it should not be open to anyone to challenge Board decisions on the basis that the provisions requiring 'in public' proceedings were not adhered to.

#### 2. Gambling

While appreciating that the Gambling Act 2005 is a UK statute, consideration should also be given to extending similar remote hearings provisions to the Licensing Board when acting as the 'Licensing Authority' under that Act. The Gambling Act says little on how Boards in Scotland are to deal with business, and since the Act simply adopts the existing Board structure under the alcohol-licensing scheme, it is not unreasonable to suppose that an amendment of the

procedures in the primary context (alcohol) should apply to the other (gambling).

Primary legislation should be utilised to effect the necessary changes.

**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.

The Council appreciates the desire to strengthen protection and make this permanent as it provides future stability; however, it is considered that the £10,000 limit is too high on a permanent basis. Whilst we consider any petition for bankruptcy on a case-by-case basis and only after all other efforts are exhausted, this higher threshold does limit recovery potential and would impact on smaller creditors to pursue debts.

For example, based on the Council's Band D Council Tax charge with water & wastewater, the proposed £10,000 limit would require the accrual of 6 years' debt before any petition for bankruptcy could be considered.

As covid recovery progresses, debt is an ongoing issue and reverting to the previous debt level of £3,000 from March 2022, would reduce the protection to debtors too quickly. As a longer term support, the proposal to extend beyond March 2022 with a creditor petitioning level of £5,000 would keep an adequate level of support for debtors whilst phasing the transition to a longer-term petition

level. Not making the £5,000 permanent allows for further review as covid recovery progresses and the longer-term picture is clearer.

### **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.

Electronic communication is more time and cost effective and is more suitable to remote/agile working practices which have developed during the pandemic which has resulted in staff not being present in offices to receive and action intimations and documents. As electronic transmission of a document must be in a way the recipient has indicated they are willing to receive the document, then this provides protection as the method of communication is expected by the recipient.

### **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.

With increasing debt issues and the impact of covid recovery, demand on debt advice services increases so it may be difficult to find and implement a debt solution within the 6 week period. An increase in the moratorium to 12 weeks will support debtors who are seeking help and advice to implement the best debt solution for their circumstances. The existing 6 months limit is too long for a permanent moratorium period, as it does not promote urgency to engage and seek the appropriate outcome; this also impacts on creditors' ability to recover debt and may in turn affect the viability of businesses.

### **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.

The ability to hold virtual meetings increases the availability of creditors to be present at the meeting and is a more efficient and agile method of working.

### **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.

The Council agrees that the existing provision is continued in terms of utilising electronic means to share formal notices with care providers. It is noted to be a quicker and easier way to communicate, particularly with organisations who are shifting to a blended approach of working styles, which undoubtedly will incorporate agile working for their staff

However, it is important that effective verbal communication also requires to continue alongside the use of electronic communication to ensure effective partnership working.

### **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.

The enabling powers should not be limited to the Civic Government (Scotland) Act 1982. While the majority of Licensing Committee proceedings involve the 1982 Act, that is not the only enactment the Committee deals with. For example: Landlord Registration under Antisocial Behaviour (Scotland) Act 2004.

The enabling provision should refer to "all proceedings of the Licensing Authority or the Local Authority when conducting proceedings involving any type of Licence, Registration, Consent or Permission."

A general form of words should be used, rather than attempt to list of all enactments as a list would quickly go out of date.

### **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.

This would seem to be an appropriate way of intimating matters and streamlining the process.

### **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.

The provisions would enable the use of an efficient communication tool which is necessary in today's world. It would also cut down on cost, resource, time and carbon footprint.

**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.

This will create more flexibility in the way which documents are signed. It would also reduce unnecessary meetings and travel, freeing up officer time and reducing carbon emissions.

**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.

As suggested within the consultation, it is our view that removal of this requirement will remove unnecessary barriers to the process of nominating a Named Person, thereby reducing delays that have previously been experienced in this regard. We do not have concerns and have not experienced any difficulty, as a result of the current temporary removal of the requirement. The proposals reflect a streamlining of process.

### **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.

The Council would support this proposal. However, it is also important that traditional methods of registration are retained.

### **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.

The Council would support this proposal. However, it is also important that traditional methods of registration are retained.

**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 proposal to make all the grounds for eviction in the private rented sector discretionary and to continue with the pre-action requirements for all rent arrears is supported. It would ensure that private landlords are engaging with their tenants to attempt to address the arrears and are offering support/signposting where appropriate. It would also allow the landlord to show that they have tried early intervention and prevention of the arrears accruing.

It is believed that giving the Tribunal discretion on the ground of rent arrears allows it to ensure that the appropriate supports have been provided, benefits addressed, section 11 notifications etc been completed. It would also afford the opportunity for the case to be signposted to the relevant local authority for Housing Advice, support and prevention.

## **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 modernises and simplifies court processes and could result in efficiency savings.

### **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 has the potential to make efficiency savings and lower the climate impact of commuting to and from court. Care needs to be taken to ensure that the software chosen to operate remote video links is available, and works well, for all court users. Poor connections or inability to access chosen platforms would risk undermining any potential benefits. There require to be necessary safeguards to ensure that court users and the public have ready access to the justice system.