

## Response ID ANON-B21S-FJGC-J

Submitted to **Covid-19 legislation: next steps**

Submitted on **2021-02-16 17:34:50**

### About you

**Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.**

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### How would you like your response to be published?

I would like my response to be published in its entirety

### What is your name?

**Name:**

Dr Alisdair MacPherson and Mrs Donna McKenzie Skene, acting as a Working Group of the Centre for Scots Law at the University of Aberdeen

### What is your email address?

**Email:**

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### Are you responding as an individual or on behalf of an organisation?

Individual

**Organisation:**

### Questions

#### Should Part 1 of the Coronavirus (Scotland) Acts be extended to September 2021?

**Write your answer here:**

Our response is confined to bankruptcy and related matters, as these are our areas of expertise.

Given the current circumstances and the fact that it appears there will not be a return to "normality" soon, it is sensible to extend the provisions in Part 1 of the Coronavirus (Scotland) Acts, regarding protection for debtors and bankruptcy, until September 2021. We note that the legislation is constructed to allow for extension in 6-month periods. This means that extension for a shorter period would require further legislation and may not be desirable on that basis. Scottish Ministers do, however, have the power to bring forward expiry before the end of the 6-month period. Depending upon developments over the coming months, this is something that should be considered.

We consider the measures to have worked relatively well and, in fact, we would be supportive of some of the measures being retained on a permanent basis. We note that some of the temporary measures are to be made permanent by the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021. We support these proposals (as noted below).

We think a permanent extension of the moratorium period on diligence (in Part 15 of the Bankruptcy (Scotland) Act) from the "normal" period of 6 weeks is reasonable. An extended period of 6 months for the moratorium is justifiable in the context of an emergency situation (such as the Coronavirus pandemic) but, we think, would be too long to retain going forward. If a fair balance is to be struck between protecting the debtor and supporting the rights of creditors to enforce after a reasonable period of time, then perhaps 12 weeks would be appropriate.

The changes to allow for electronic service of documents, electronic signatures and virtual meetings of creditors seem sensible and better reflect modern forms of communication and behaviour. They also make the relevant acts and processes easier and more efficient. If the changes were to be made permanent, the need for further legislation on these matters in an emergency context could also be avoided.

We also support increasing the maximum debt level in the minimal asset process (MAP) from £17,000 to £25,000 on a permanent basis. However, we would have concerns about permanently increasing the required debt level for a creditor (or creditors) to become a "qualified creditor" (or "qualified creditors") and thereby enabling them to petition for a debtor's sequestration, especially if the increase were to be a large one. We believe that it is often overlooked that creditors are not just banks and other large entities but also smaller creditors such as self-employed tradespeople or non-business creditors, on whom the change might impact disproportionately. We are aware that it can be argued such creditors can perhaps expect little back in the event of a sequestration anyway, but the ability to take action can limit the further build-up of debt. This further decreases the chance of creditors generally obtaining a return and stops the debtor continuing to build up increasingly unmanageable debt.

We do not object to the temporary changes regarding fees for debtor bankruptcy applications being made permanent.

#### Are sufficient equality and human rights safeguards in place to extend the powers?

**Enter your response below:**

We have no particular comment to make about this.

**What impact might the pre-election recess period have on the governance and scrutiny of Scotland's Covid-19 response? How can this be addressed?**

**Write your response here:**

We have no particular comment to make on this.

**What can be done to support the public to understand and comply with the public health restrictions in 2021?**

**Write your response here:**

We have no particular comment to make on this.

**What priorities should inform the Scottish Government's strategy and response to Covid-19 in 2021?**

**Write your response here:**

The priorities should be to address the economic and financial fallout arising as a result of Covid-19 and the responses to this, with the corresponding knock-on effects for bankruptcy and debt resolution.

**If a similar emergency happens again, what powers should be re-used? What powers should be modified?**

**Write your response here:**

As noted above, if certain changes are made to the law of bankruptcy on a permanent basis, this will avoid the necessity of future emergency laws to deal with these aspects. However, we accept that there may still be some necessity to introduce or reintroduce temporary measures in response to whatever the emergency happens to be.

**Other issues you wish to raise**

**Please comment on any other issues you wish to raise.**

**Please enter your answer in the text box below:**

We do not have any other comments.

**Evaluation**

**Was this Call for Views submission tool easy to use?**

Easy to use

**Why did you feel it was, or was not, easy to use?:**

**Were the questions easy to understand?**

Easy to understand

**Why do you feel the questions were, or were not, easy to understand?:**

**Do you think this Call for Views submission tool provides a good way for you to get involved in the work of Parliament?**

Yes

**Please explain the reasons for your answer?:**

**Would you use this Call for Views submission tool again in future to engage with the Scottish Parliament if there was a topic you were interested in?**

Yes

**Please explain the reasons for your answer?:**