

**Response by the Administrative Justice & Tribunals Council Scottish Committee  
to the Scottish Government consultation : Amendments to the Mental Health Legislation in the  
Event of a Civil Emergency or Influenza Pandemic**

**CONSULTATION QUESTIONS**

Your views are sought on the following questions:

***Question 1***

Do you agree with the Level 1 and Level 2 approach taken within this consultation paper?

**The SCAJTC-("The Committee") consider that far more information in relation to the level of pandemic and the emergency powers to be utilised needs to be provided before this question can be answered. For example, what will be the trigger criteria for each level ? We would express a concern that the nature of the emergency requires a unified approach across vital services rather than an approach restricted to mental health services.**

***Question 2***

What are your views on the proposals contained within the consultation paper in relation to the Level 1 regime?

**The proposals are clearly at odds with the key Millan principle of Participation and may also be contrary to Articles 5 and/or 6 of the ECHR. The Committee would ask the question of whether unavoidable delay in convening hearings in individual cases is to be preferred to an approach which appears to dispense altogether with patients' rights to a fair and participative hearing and other vital safeguards, particularly given the lengthy periods of detention which may follow.**

***Question 3***

What are your views otherwise on the proposals contained within the consultation paper in relation to the Level 2 amendments for (a) civil patients and (b) forensic patients?

**As stated above, the proposals are viewed as serious infringements of the rights of individuals under both domestic law and European law regardless of the category of patient concerned. In addition, the proposed powers to be given to the Mental Welfare Commission would seriously compromise the independent status of that organisation.**

***Question 4***

Are there other changes that we should consider in respect of the mental health legislation that would in your view be required in the event of a pandemic?

**The Committee would again pose the question of whether, given the UK wide nature of the pandemic and its likely impact on other vital services such as Police, Prisons , Education & Criminal Justice, consideration should be given to the use of wider overarching powers such as those contained within the Civil Contingencies Act 2004.**