



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Wednesday 24 June 2020

Session 5



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COVID-19 COMMITTEE
11th Meeting 2020, Session 5

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

- *Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
- *Annabelle Ewing (Cowdenbeath) (SNP)
- *Ross Greer (West Scotland) (Green)
- *Shona Robison (Dundee City East) (SNP)
- *Stewart Stevenson (Banffshire and Buchan Coast) (SNP)
- *Adam Tomkins (Glasgow) (Con)
- *Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Wednesday 24 June 2020

[The Convener opened the meeting at 09:00]

“The Coronavirus Acts: Two Monthly Report to Scottish Parliament” and Subordinate Legislation

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 4) Regulations 2020 (SSI 2020/182)

The Convener (Murdo Fraser): Good morning and welcome to the 11th meeting of the COVID-19 Committee. We are joined by the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell, who will give evidence on the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 4) Regulations 2020. The evidence session will also include questions on the Scottish Government’s first two-monthly report on the coronavirus acts.

Members have received a paper by the clerks that provides background and procedural information, along with a copy of the report.

I welcome the cabinet secretary, who is joined by the Scottish Government officials David Rogers, who is director for constitution and Cabinet; Pamela Wilkinson, who is from the coronavirus legislation co-ordination reporting team; and Rebecca Whyte, who is involved in co-ordination of the health protection coronavirus restrictions regulations.

I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Thank you for inviting me to take part in the meeting. I will make a short statement about the report and about the process in which we are presently engaged.

As the committee will know, the first report on the use of the emergency powers in the Coronavirus (Scotland) Act 2020—the first Scottish coronavirus act—and the Coronavirus Act 2020, to which the Scottish Parliament gave legislative consent, was laid and published on 9 June. I made a statement on the report in the chamber that afternoon. That marked the beginning of our reporting process: with new

measures having been put in place, new monitoring and reporting arrangements were established, or were in the process of being established, to support what we were trying to do.

We have committed to continuing to develop our reporting arrangements in partnership with the COVID-19 Committee and the Parliament, and I welcome this opportunity to appear before the committee and take questions on the report and on that process. We are here to discuss the first report, but time marches on and we will soon be turning our attention to preparations for the second report, which will be due following the end of the second reporting period on 31 July.

It might be helpful if, in advance of the recess, I give some indication of the timings of the process, as far as we are able to do so. Our assumption is that the timescale for our second report will be broadly similar to that for the first report with regard to submission to Parliament following the end of the reporting period. On that basis, it is my expectation that, with the Parliament’s agreement, we will lay our second report and make a statement on it in the week beginning 10 August, which is the week that we return from recess.

Today’s evidence session is taking place in the context of Scotland having entered into phase 2 of the route map. As the First Minister set out last week, the progress that the country has made during the period of lockdown has allowed restrictions to begin to be lifted. We published an update to the route map last week. The First Minister indicated that we will move as quickly as possible, as the evidence allows, to lift further restrictions as soon as we can. Indeed, the Deputy First Minister made welcome announcements about schools yesterday that reflected the progress that has been and is being made in suppressing the virus. I expect that, later today, the First Minister will have more to say on delivery of the route map.

The regulations that I am giving evidence on today cover some of, but not all, the phase 2 changes. Further regulations will be made to reflect subsequent relaxations of restrictions in phase 2 and in future phases. Inevitably, as the committee is aware, those changes will be made during recess. In the light of that fact, I want to make it clear that, should the committee decide that it would be useful and important to meet at any stage over the parliamentary recess to consider subsequent regulations, I would, of course, make myself available to the committee.

The Convener: Thank you for that introduction. The committee will discuss later whether we might want to meet over the recess. Obviously, we will keep in touch with you on that.

Members have questions about the regulations and the report. I will start with a question about the regulations that are before us. As you alluded to, there has been a rapid change of pace in the relaxation of restrictions. In addition to the regulations that we are looking at, the First Minister will say something later this morning about the potential lifting of further restrictions.

In your opening statement, you mentioned the evidence behind the relaxations. The committee has been trying to understand better the scientific basis for the decisions that the Scottish Government is taking. We all appreciate the difficulties. We must proceed cautiously, because there is a risk of a second spike and more harm from coronavirus if we proceed too fast. However, we have to weigh that risk against the potential future harms that might come from not relaxing restrictions.

For example, we know that there might be more harms and deaths from cancer in the future because cancer screenings have been suspended. We know that there might be mental health impacts from an extended lockdown. We know that, in the long run, there might be greater physical and mental health impacts from an economic recession, higher unemployment and more business failures. How are the current harms from more Covid-19 infection weighed against the potential future harms from other causes?

Michael Russell: A wide range of evidence is published and in the public domain, and there is also the evidence that comes on an almost daily basis from the web of scientific advice that is available to the Scottish Government. I do not know whether the committee is aware that I gave evidence to the House of Commons Public Administration and Constitutional Affairs Committee, but such questions were among the key questions. What is the web of evidence? What are the connections? Does the scientific advisory group for emergencies give advice to the Scottish Government as well as to the United Kingdom Government? What about the Scottish Government's scientific advisory group? SAGE and our scientific advisory group include a range of experts who, as well as dealing with health issues, deal with, for example, behavioural issues.

In addition, there is the work of the Scottish Government's chief economist. There is no shortage of economists who are reporting on issues relating to the pandemic and the inevitable damage that it will cause. Information has been published today on the effect of the recession and the fact that it will be very deep. Medical experts, psychiatrists and others give evidence about harm. The work of educational psychologists has also been important.

The web of advice and evidence is very substantial. The First Minister, the Cabinet Secretary for Health and Sport and the principal medical advisers, such as the chief medical officer, are all part of that web. At the end of the day, a judgment has to be drawn from all that evidence on the right next step forward. The First Minister has talked about that, and I am sure that she will talk about it again today. Part of the process is the questioning by Parliament of the decisions that are made and the bringing forward of the advice and information on which those decisions are based.

At the end of the day, decisions have to be made by elected representatives, who stand or fall on the basis of the decisions that they have made. You might accuse those elected representatives of being overcautious. However, this very week, the view has been expressed that a second wave might have started in South Korea. If we were to move faster than we should, a second wave could come and we would have to go backwards. Sustainability of progress is another big issue. I do not think that any of us would want to see progress being made and then reversed. This week, regulations have been reimposed in two areas of Germany because of outbreaks that have taken place.

Yesterday, the Prime Minister and the advisers who were with him on what was their final daily press call made it clear that they thought that some cluster outbreaks were virtually inevitable. *[Interruption.]* I hope that you like the music, but I am sorry about that. All those things will be taken into account by the First Minister, the health secretary and the Cabinet, because those matters are discussed by Cabinet. The First Minister accounts for her decisions on a weekly basis during her appearances before the Scottish Parliament and on a daily basis at the press conferences.

The Convener: Thank you for that response. You talked about the web of advice and evidence that is available to the Scottish ministers when they make decisions. Is enough done to share that advice and evidence with the public?

Professor Linda Bauld, whom you will know and who has given evidence to this committee, gave evidence to the Scottish Affairs Committee at Westminster last week and said that she has "no idea" where the evidence for some of the Scottish Government's lockdown decisions is coming from. If the professor of public health at the University of Edinburgh does not have any idea where the evidence is coming from, how can we or the public be assured about your decisions?

Michael Russell: Professor Bauld is entitled to her opinion, but I have to say that I have just spoken to colleagues of hers at the University of

Edinburgh, who have every idea where the advice is coming from, because they are giving the advice. Look at the membership of the Scottish Government Covid-19 advisory group: the chair is an academic at the University of Edinburgh and there are a range of other academics on that scientific advisory group.

There is nothing secret about the membership of that group and others—it has been provided to the committee and it can be provided again. There is nothing secret about the information that the chief economic adviser produces on a regular basis.

There is a great deal of evidence. That is one of the problems: there is a lot of evidence, and the nature of evidence is such that some of it will be contradictory. A judgment process is also important, and it is important that the people who make the judgments are accountable and able to answer questions like yours, questions from members in the chamber and questions from the press. Whatever criticisms you have made and will make, I do not think that you can criticise the First Minister or any minister for failing to appear and answer questions. I am not making a complaint when I say that this is the fourth committee that I will have attended in less than a week—three in the Scottish Parliament and one at Westminster. That is as it should be.

The Convener: Thank you; we appreciate your time and that of your colleagues in coming to give evidence to us this morning.

When the First Minister proposed her original road map, she said that she wanted to treat the Scottish people as adults, yet from what you are saying, it seems that the Scottish ministers are making judgments based on science and evidence that is not being widely shared, with us, with the public or with people like Professor Bauld, as we just heard.

Michael Russell: With the greatest respect, that is not what I said at all. That is your contention, and I reject it firmly. There is a vast amount of evidence in the public domain. More than that, not only was the route map published but the First Minister made it clear that the revised route map, which was published last week, is the result of changes that are taking place; she was at pains to explain the reasons for those changes and why things are moving in the direction in which they are moving—she talked about the figures, for example.

I do not think that there has been or is any reluctance to share information. In fact, I think that we have bent over backwards to share information and continue to do so. The reporting process is, I hope, an exemplar of that. We have tried very hard to provide as much information as we can,

and as I said in my opening remarks, we are developing that process in partnership with the committee, as we should.

Shona Robison (Dundee City East) (SNP): Cabinet secretary, in response to Murdo Fraser you mentioned countries that had quite successfully suppressed the virus but which are currently having to take steps to prevent a second wave. You mentioned South Korea and Germany. That situation demonstrates to me that we cannot be complacent at all.

I want to probe how you gather the evidence from those other countries. You have set out the steps that will be taken here to change the restrictions. When changes are made to restrictions elsewhere, such as their being tightened again, what communication channels does the scientific community here have with the scientific community in, say, Germany in relation to the reasons for the spikes? For example, a specific issue has arisen in Germany with meat processing plants. Is information on what might be causing spikes elsewhere shared in order to give ministers here the full picture?

09:15

Michael Russell: There is a global effort to defeat the virus, which involves a great deal of interchange of information and advice. As a former health secretary, you will know better than I do about the World Health Organization, which is one of the big clearing houses of information.

We seek as much information as we can through personal contacts. As the minister for external affairs, I ensure that I am informed by the people who work for us in the European capitals and elsewhere and who keep a flow of information coming to us on what is happening. These days, when I have conversations with politicians and representatives in other countries, the issue of what is happening in relation to the virus is always part of the discussion.

We try to keep ourselves well informed. As a former minister, you will know that ministers must keep themselves well informed about what is taking place and be open to the widest possible range of information. For example, on face coverings, there have been publications by the WHO and there is the experience in other countries, which is looked at closely. I understand that there is direct contact between health services on some issues.

As I said in my answer to Murdo Fraser, with scientific advice, there is a web of information that is available at all times. That includes people making sure that they are informed. For example, on the situation in Germany, there has been substantial publication in the news media over the

past couple of days on what has been taking place there, and that is an important source of information.

Shona Robison: A number of pieces of work are being done to provide further advice to the First Minister and other ministers on hot spots for transmission. When are those pieces of work likely to be concluded? There is the potential for further advice on face masks, which you have just mentioned, and I think that the reopening of pubs and restaurants comes under the heading of further advice. Are timescales laid out for when those will report?

Michael Russell: I am happy to provide more information on that, because the situation changes regularly. Last Thursday, when the First Minister gave her update, she said that she had commissioned more advice on social distancing and the 2m issue, and that she expected to be able to say something about that by 2 July. I think that she indicated yesterday that she hoped to have the advice reasonably soon, and she said two days ago that she did not think that it would be long before she could say something. We are in the process of decision making in that respect.

A measure of the progress that is being made is that we have been able to move faster and go into a weekly set of changes. We should not lose sight of that. It is not a sign of something being wrong; it is a sign of something being right. We can amplify the changes as time goes on, as John Swinney indicated yesterday. I have said previously to the committee that one important feature of the extraordinary times that we are living through is that circumstances have changed, information has changed and knowledge has grown and that, therefore, there has been an iterative process, and we have changed as we have gone along. That is the right thing to do, because the learning process has been important.

We are in the process of easing lockdown, and I am sure that the First Minister will say more about that later today when she gives her weekly report.

Shona Robison: Many people have welcomed the sense of pace in the easing of lockdown on a number of fronts at the moment. However, do ministers have a bit of unease about what will happen if there are spikes and the pace has to change because the R number goes up? It might be difficult to take the public with us on that, given that there is now an expectation that we will continue on a certain route. How concerned are you that there might have to be a change of direction at some point?

Michael Russell: I think that people are reasonable. If they were to see a reversal in the situation—which, please God, they will not—a rapid rise in the number of infections and a move

towards renewed community transmission—we should remember that we have been able to move because we believe that the WHO criteria have been met and that community transmission has been suppressed—I think that they would adapt, because there would inevitably have to be changes. Whether those changes were made on a geographical basis to deal with clusters or across the whole country would depend on the seriousness of the situation.

To use another international example, across the Atlantic the number of infections is rising very quickly in certain places, and in some states there is a threat that the health service will be overwhelmed. We must avoid that. We have gone through what we have gone through in the past 13 weeks to make sure that that does not happen. We should not do anything that we believe would run the risk—or an unacceptable risk—of that happening. Just as the move from 2m to 1m is not absolute, the definition of risk is not absolute, but we must be very mindful that that would throw away the progress that we have made.

Shona Robison: Thank you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, cabinet secretary. Could you tell us which of the powers that were taken under the emergency legislation we have felt necessary to deploy to good effect, and which powers have been held in reserve and not been deployed, to give us a flavour of what we have had to do over the past 13 weeks or so?

Michael Russell: I think that you are talking about the regulations as well as the legislation. The regulations led to a very severe lockdown from 23 March, but there was action before that. Large-scale gatherings were banned on, I think, 13 March and schools closed on 20 March. A range of things came in before the complete lockdown, which then allowed only essential shops and work to continue and the presumption was that people should stay at home and not go out except once a day for a small amount of exercise. Those restrictions were very strict and difficult. They have been progressively relaxed at phases 1 and 2 and we are looking for further relaxation.

A huge number of things were put into the legislation that we felt had to be in there. On the positive side was the ceasing of evictions and making sure that debt recovery would not put people in enormous difficulty; changes to the legal system such as the suspension of time limits, issues with the Parole Board and the temporary release of prisoners; and changes to licensing regimes for alcohol and non-alcohol so that licences would not expire.

There were technical changes to legislation such as the Public Finance and Accountability

(Scotland) Act 2000 to make sure that we were not putting people in impossible situations. The UK legislation included things such as the emergency registration of nurses and other healthcare professionals. That has been very valuable and brought people back into the health service who had retired, but we also had to make changes to the pension arrangements so that people could come back to work.

An item that was in the legislation but has not been used, which people may want to move on to, is the modification of mental health legislation in terms of the number of signatories. That has not been switched on in Scotland or in England, but it has in Wales and Northern Ireland. There are existing powers that we did not take.

There was the issue that Monica Lennon has asked about on a number of occasions, about which I wrote to the committee again this week: the duty of local authorities to assess needs, which section 16 of the Coronavirus Act 2020 deals with. There was also the registration of deaths and stillbirths, and there were issues in the second act—the Coronavirus (Scotland) (No 2) Act 2020—which we are not talking about today; we have now been able to make some difference on issues such as marriage.

There were also issues relating to things that people do not recognise or think about, such as temporary judicial commissioners—we had to make arrangements about applying, to ensure that they were appointed—and there were issues relating to disclosure events and to ensuring that vaccination and immunisation can continue in difficult circumstances.

I could go on, right down to the postponement of the elections. Although many people will not regard that as the most important issue, there have been no local authority by-elections and the first of them is scheduled for 1 October. There has been a massive raft of things, and that is without dealing with the second act. We are now slowly easing the original set of regulations, which were put in place in late March, in significant ways. Just as it has been easier to go into lockdown than to come out of it, it is easier to put regulation in place and harder to withdraw from it and maintain the clarity. We have to keep thinking about that issue.

I am sorry—that was a long answer.

Willie Coffey: No, that was helpful. Thank you. Given that our direction of travel is to relax some regulations, I will ask about a specific issue. Relaxations are taking place elsewhere, but the fact that families are not able to attend family funerals in numbers or have friends of families attend them is, as you know, causing a lot of stress. Can you see an opportunity to look at that

again soon, so that we can lift some of the stress that many families are feeling?

Michael Russell: Yes, I have a strong feeling that that is one of the areas that we wish to move on as quickly as we can. However, the issue about family funerals is simple: some funerals are very large events, and gathering large groups of people without fully observing social distancing, which might not be possible, particularly in an indoor setting, would be dangerous and would encourage the spread of the virus. That is the reason for the restriction on funerals. It will be possible to relax that when there are changes in social distancing rules or when we believe that the risk is substantially reduced. I recognise that it has been very difficult for individuals. Fortunately, I have not had that experience, but close friends have, and it has been a deeply difficult thing to happen. We would like to move as quickly as we can on that, but the outcome is important.

As I said yesterday at the Westminster Public Administration and Constitutional Affairs Committee, outcome is more important than conformity. Other people are doing things, because they have made their judgment. Our duty is to make that judgment in the best interests of the people of Scotland. We look at the outcome of that judgment, not whether we conform with events elsewhere.

Willie Coffey: Thank you.

Adam Tomkins (Glasgow) (Con): Good morning. Cabinet secretary, I will explore your current thinking on the relationship now and going forward between regulations, guidance and individual choice. Do you agree that, in Scotland, we are moving from a period in which we have been governed by enormously prescriptive, top-down rules to a period in which much more will be left to guidance and individual decision making? Would that be an appropriate framing of where we are?

Michael Russell: Yes. I would qualify that by saying that we have to consider the pace of that change carefully. However, I would not disagree with the thesis that you put forward. That would be what we would wish to do as we come out of this set of circumstances.

Adam Tomkins: Willie Coffey posed a question to you about the on-going importance of clarity through this journey. You said that going into lockdown was easier than coming out of it, and one of the reasons for that is that we were able to be clear and prescriptive in the regulations, which still govern us.

What steps are you and your ministerial colleagues putting in place to ensure that, as we ease our way out of lockdown and move to a position of greater individual freedom, autonomy

and choice, we are able to convey as clearly as possible to the people whom we represent what they are and are not permitted and encouraged to do? The common strategy coming out will have to be different from the common strategy going in.

09:30

Michael Russell: I entirely agree. In the overall concept of what we are trying to do, that is perhaps the most important issue to address as we move forward.

I will give an example. As a constituency MSP, I serve an area with a large number of islands and ferry routes, and I am aware that there has been an interpretative difficulty between the regulations and the guidance. It has been difficult to explain clearly where there is dubiety as to whether the guidance permits or does not permit things that the regulations permit.

The common strategy has changed and continues to do so. I cannot point to a single way in which it will be done, but you are right to identify that as a key issue. The committee should consider it as such and ensure that the guidance—which, as it suggests, is meant to guide people to do what the regulations say—is clear and unambiguous.

However, there is an implication and a backward link that the regulations have to be clear and unambiguous, too. If we have ambiguous regulations, we will inevitably have ambiguous guidance, and something always gets into the mix. There is a Russian proverb about the tsar being in Moscow and heaven being very far away; it is what happens on the ground that counts, and what is happening on the ground is extremely difficult.

You are right about this. The issue worries me a lot, too, because I spend a lot of my time as a constituency MSP having to tell people what is in the regulations and the guidance and explaining to them how that goes forward. We need to understand that and be clear about it. The point is well made, the issue is very important and we should be mindful about what we do in that regard.

My final point is that you are also absolutely right that it will become more difficult. Just as it is easier to go into lockdown than to come out—you explained well why that is—it will become more difficult as we unpick what are simple regulations and apply them to the complexity of human behaviour. We must be aware of that.

Adam Tomkins: Is it not the case that one of the changes in what we are calling the common strategy is that we simply have to say to our constituents and the general public that there will be more ambiguity now? Things will not be as clear. We are on a journey from lockdown to

freedom and the new normal, and there will be more freedom, choice and autonomy in whatever the new normal ends up looking like—none of us knows for sure yet—than there was under lockdown. It will presumably no longer be a criminal offence to leave one's home without a reasonable excuse, for example, even though there will still be lists of businesses that cannot safely open.

It is inevitable that we move to a position of more ambiguity because more will be left to individual choice and, hopefully, informed decision making. It must surely now be the case that everyone is aware of the risks of Covid-19, the signs that they need to look out for and the precautions that they need to take. Are we moving to a position in which the Government advice to people in Scotland is to make their own decisions based on what they know about what is safe for them and their families?

Michael Russell: Broadly, yes, but I stress that we are not out of the woods yet. I broadly agree with you, but not everybody knows or will act in a responsible way. I would like to think that they will, but it is not true. A small minority will not work within that context. The question is whether they can be compelled to, which is what the law has done, or whether there is peer pressure and a community view that they should behave in that way, but some people will not do it.

“Ambiguity” is an interesting word and two ideas stand on either side of it. You cannot have ambiguity when you have criminal penalties, by definition, although I am not saying that the law is absolute and I would not get into that discussion with Adam Tomkins. If there is a criminal penalty when somebody does not do something, ambiguity does not work. The issue on the other side is responsibility. If we have—and, as citizens, we should have—the right to make our own decisions, but they have to be made in extraordinary circumstances that can be life threatening, it is not true to say that there is ambiguity of decision making with no consequences. If circumstances are life threatening, responsibility is heavier than it might otherwise have been.

I broadly agree with you, but I want to bracket the word “ambiguity” in a different way.

Adam Tomkins: That is helpful. Thank you.

I have a final quick question, convener. I fully agree with what Shona Robison said earlier about there being no room for complacency. Nonetheless, would it not be helpful for the Government to come out clearly and say that we are no longer in a public health emergency? Covid has not gone away, but we are now moving from a period of crisis management in which we did

everything that was necessary in the name of suppressing the spread of the virus to a period of risk management, in which we need a much more balanced and proportionate approach to learning to live with the virus, which is under control but has not yet been eliminated?

Michael Russell: That is what the route map does, to be honest. It is expressed in different ways, but the issue is about community transmission and the R number, which is too high. The route map goes through a set of stages to where the issue is not only the R number but the risk, and I accept that those two words need to be used. In phase 4, that risk is lower than it would have been in phase 3 and phase 2. I do not think that we are not saying what Mr Tomkins wants us to say, but it is being expressed through the route map in a way that is necessary for us to express it.

Monica Lennon (Central Scotland) (Lab): Good morning cabinet secretary. At the moment, face coverings are mandatory on public transport but advisory in other settings. Yesterday in the chamber, the Cabinet Secretary for Health and Sport made some further announcements about the use of face coverings in hospitals and care homes, such as that visitors will be expected to wear face coverings. It was not clear to me whether that guidance was advisory or whether it will be in regulations. Will you update the committee on that? If it is going to be in regulation, will there be an opportunity for parliamentary scrutiny of that regulation?

Michael Russell: Parliament will have the opportunity to scrutinise any regulation; that is axiomatic and is what will happen. I understand that the health secretary is to bring forward further proposals on that and, when she does so, the committee will have the chance to scrutinise them.

There is a process under way here. The First Minister indicated yesterday that she is considering the issue of mandatory face coverings in retail settings, and there is an issue about how face coverings will be used if there are to be any changes to the 2m rule, although I do not know that there will be.

I think that the scrutiny will be done within that context, but I have not seen the proposal for regulation. However, I suspect that Jean Freeman will make such a proposal and, the moment that happens, the committee will be notified and have the chance to consider it. It might be within the wider context of making sure that face coverings are mandatory elsewhere, with exemptions for some people, such as children, who are exempted in the transport regulations, as are people who cannot wear face coverings for reasons of health, which is as it should be.

Monica Lennon: Following on from Adam Tomkins's questions about what is guidance and what is regulations, could you update us on how many fixed-penalty notices have been issued under the regulations to people who have flouted the lockdown? Do you know how many people have gone on to appeal those fines and how many were successful with their appeals?

Michael Russell: No, I do not have those figures with me, but I will make sure that you get them. They are updated after every weekend, I think. I have not seen the figures that were updated last weekend, but I will make sure that you and the committee are provided with that information. It usually comes to you from the justice secretary, but I will make sure that that happens.

Monica Lennon: That would be great. Thank you.

My final question goes back to what you said in response to Willie Coffey a wee while ago. He referred to section 16 of the 2020 act, and assessment of needs, and my on-going questions on that matter—I thank you for your letter to the committee. Have you received further information from those councils that have confirmed that they have used the powers in that section about how many times they did so? If the Government does not hold that information, do you expect councils to hold it? Again, I know that that provision was primarily linked to concerns about workforce and people being off sick, so I just wondered in general terms, as you monitor these things, are you more satisfied that people are back at work and that we are seeing normal levels of attendance at local authorities, for example?

Michael Russell: We know from the figures—*[Inaudible]*.

The Convener: Cabinet secretary, we missed all that, because your voice disappeared and then went into a high-pitched whine that none of us could decipher. We are having a little bit of a tech problem. Could you start your answer to that question again?

I do not think that the cabinet secretary can hear me. We will suspend briefly while we try to resolve the problem.

09:43

Meeting suspended.

09:47

On resuming—

The Convener: Welcome back and apologies for that brief interruption. I hope that we have the

cabinet secretary back with us and that the technology is working properly again.

I am sorry, cabinet secretary, but we had great difficulty in hearing your response to the previous question. Do you want to pick up where you left off or would it be helpful if Monica Lennon asked the question again?

Michael Russell: If Monica Lennon asks the question again, I will be happy to answer it. I hope that you will be able to hear me this time.

Monica Lennon: This is take 2. I will try to remember the question.

In response to Willie Coffey, the cabinet secretary mentioned section 16 of the Coronavirus Act 2020 and the assessment of needs, and this week he helpfully wrote to the committee with some updates. Where councils have confirmed their use of the powers in that section of the 2020 act, do we know how many times have they had to use them? Is that information expected to be held by those councils? How often does it come to the Government?

Also, given that the rationale behind the powers was that there was an expectation that lots of staff might be off sick in local authorities, what is the current picture in that regard?

Michael Russell: I think it would be agreed that very few people have stunned me into silence, but you did so. I am glad that I am back to start again.

I think that the fear that both you and I had was that the powers would be overused. However, the rate of people who are not at work has been considerably lower than expected and we have seen that local authorities are using the power much less than we feared they might. It is important to ask for more information about that, and we will try to do so.

The Convener: Annabelle Ewing will ask the next question.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, cabinet secretary. Face coverings are now compulsory on public transport in Scotland, subject to specific exemptions. Is a mechanism in place to assess how that is working in practice, including the exemptions? To what extent will any such assessment inform the debate about whether to make face coverings compulsory in shops?

Michael Russell: There will be an assessment of how effective the policy is. From what we can observe, people are observing the requirement. It is too early to say what the outcome will be, but the First Minister and her advisers believe that the policy is a useful contribution, and we will have to take it from there. As I indicated to Monica Lennon, the issue is wider than simply a choice

between transport or shops or a combination of both; there are a range of other options and, of course, we recognise the exceptions.

Annabelle Ewing: I assume that the exemption relating to face coverings causing difficulty with health issues would include difficulties with mental health issues such as anxiety and so on.

Michael Russell: Yes. Clearly, we want people to wear face coverings on public transport—it is mandatory to do so—but we cannot ask people to do it if it would injure their health. That would be wrong.

Annabelle Ewing: Thank you for that clarification. Some people contacted me to say that they were anxious about that issue.

The report talks about children's hearings and looked-after children and the provisions on, for example, pushing back the timescales for appeal disposal and changing the conduct and administration of hearings. However, I understand that there have not yet been any face-to-face hearings. What is the thinking on how we will make progress in that regard? I am getting a wee bit of traffic on that issue and people are keen to know when we might see progress on face-to-face hearings.

Michael Russell: Progress on preparing to restart those is under way. That is one of the issues that will be considered as we move forward from phase 2 into phase 3. Nobody wants that to be held back for a moment longer than necessary. I am happy to ask the relevant minister to write to you to indicate the current thinking and timescale.

Annabelle Ewing: That would be great—thanks.

The Convener: I have a follow-up question on face coverings. The Scottish Retail Consortium has said in the past few days that, if there was a proposal to make face coverings mandatory in shops, it would not want retail workers to have to enforce that, and we have seen something similar in relation to public transport. It will now be an offence not to wear a face covering on public transport, but workers have expressed concerns about their responsibilities in that regard. For example, Lothian Buses has said in the past couple of days that its drivers have said that they do not want to enforce that.

Do you have any observations on how the regulations will be enforced if those who are working in those sectors do not wish to take on that responsibility?

Michael Russell: We do not normally ask individuals to act as police officers—they do not have the powers that the police have and they cannot impose fixed penalties. Those workers are not police officers. They may be able to report that

the regulations are being breached and they may be concerned that the regulations are being breached, because the regulations are there to protect their health, but it is up to those who are responsible for enforcing the law—that is, the police force—to do so.

Ross Greer (West Scotland) (Green): My line of questioning is about the advice that the Government is receiving. I want to draw a distinction between evidence and advice, because there has been a lot of conflation of the two and a lot of understandable confusion in the public discussion about what the Government does and does not publish.

The Government has been publishing some evidence, but the story has been different when it comes to advice. The best example would be yesterday's announcement about schools. It is a significant decision and a significant bit of movement by the Scottish Government to say not only that schools will be reopen full time, but that social distancing in schools will end. However, I do not know, and the public do not know, what Scottish Government advisers have told the Government about the implications of ending social distancing or the balance of risk—were they considering mitigation factors such as face coverings, which have just been mentioned? We do not know what advice the Government has received about that.

The minutes of the advisory group meetings do not really say anything about that. They say who was there and give some broad subject areas that were discussed. The Government has published a selection of evidence, but it has not published the advice that it has received. Will you start to publish the advice? In the specific case of the decision on schools, a lot of people—particularly staff—are concerned about the implications of ending social distancing in schools, so will you publish the advice that you received? I do not mean just the evidence on which the advice was based; I am asking about the advice itself.

Michael Russell: It has never been the practice of any Government to publish internal advice on which decisions are based or not based. That is a clear exemption in relation to freedom of information, as it should be. I am not trying to be difficult but, as a minister of some years' standing, I would say that, if every single piece of advice was published, it would be impossible for an Administration to operate properly.

However, we have been and are committed to publishing the evidence, and we do that. In addition, as an MSP who is on the Education and Skills Committee, you can pursue the matter through that committee and the normal channels to get the information that you want from the Deputy First Minister.

Very few Governments publish as much information as we do and very few have been as open as we have been during the pandemic or as willing to attend, to discuss, to be questioned in this way and to put information in the public domain. It is not feasible or sensible to say that every piece of advice on which decisions are based should be published, and I am quite sure that it will not be. If it was, it would make the process of government impossible.

Ross Greer: With respect, I am not asking that every piece of advice be published verbatim. I draw a distinction between public health advice during a pandemic and legal advice, which it is entirely understandable that a Government would not wish to publish. We are in a pandemic, and public confidence is essential.

Is it valid to support the ending of social distancing in schools? I do not know the answer to that. I have asked the Deputy First Minister, both in the Education and Skills Committee and when he appeared before this committee, whether he would publish the advice. When he appeared before this committee some seven weeks ago, he said that he would take that back, discuss it with other Cabinet ministers and get back to us, but no one has got back to us on that specific point.

There is something really important here about public confidence. I am not requesting that the Government publishes every piece of advice verbatim and I am certainly not requesting that it attributes that advice to individuals. I accept that advisers must feel free to give frank and open advice. However, I have no idea what the broad spectrum of opinion was in the advisory group on this decision of massive importance. There is an issue of transparency.

Do you accept that there is a distinction between evidence and advice and that there is a legitimate demand to understand the kind of advice that the Government is getting, which is separate from publishing each item of advice verbatim?

10:00

Michael Russell: Of course I accept that there is a difference between evidence and advice. It is not absolute, but there is a difference. However, I do not accept that the Scottish Government and particularly the Deputy First Minister have done anything other than be utterly transparent on the process that they have gone through, the information that they have received, the consideration that they have given and the conclusions that they have reached.

You can prolong this as much as you wish, but it is not in anybody's interests to do so. John Swinney was very clear yesterday about the

process that he has been through, what he has considered and what he has brought to the table. I would have thought—this appears to be the case from my postbag—that most people would welcome that and recognise that circumstances change.

I re-emphasise that no Government that I know of has been as open or as willing to put material on the table and answer questions as this Government has been. I am sure that you will continue to ask John Swinney such questions, and you may well ask the members of the group, whom you know, what their views are and what their information is. None of that has been secret, and neither have the people who have been engaged and involved. They have been publishing information themselves.

Ross Greer: I want to ask about the criteria for membership of the Government's various recovery groups, and I will use education to provide a brief example.

I raised concerns with the Deputy First Minister about the lack of engagement with young people. I accept that it can often not be appropriate to have young people on a high-level group, but there has been a lack of engagement with them. A more tangible example is the recovery group that the Government has set up for the private rented sector, which does not include representation of people who live in that sector—it has representation of landlords, but not of tenants.

What are the criteria for membership of such groups? It does not look as if a concerning pattern is emerging, but in the case of the private rented sector, it is concerning to have a recovery group set up for a significant section of society but not to have anyone from the group of people who are part of it on the group.

Michael Russell: With respect, the letter that I wrote to Andy Wightman on the matter says that there are two representatives on the group who represent the private rented sector. Mr Wightman disagrees with those two, but there are two people who are designated as representing that sector.

Ross Greer: But—

Michael Russell: They are designated as representing, and accept that they are representing, that sector. In those circumstances, the right thing for Mr Wightman to do is to raise the matter directly with the relevant minister—and, to use a good Scots word, he is never blate in coming forward on such matters. No doubt he will make suggestions as to who else should be added to the group. There is discussion between him and the minister. I cannot predict the outcome of that, but it is the right thing to happen.

Ross Greer: Finally, I have a general question on that. Who does the Government generally take advice from on making appointments to such groups? Is it simply up to individual ministers to decide who they believe it would be useful to hear from?

Michael Russell: I would be very surprised if an individual minister did not speak to representatives of the sector and people that he or she knows in the sector, as well as officials who know the sector and others, before coming to a conclusion about the best balance and the best people to complete the task. Such considerations are not governed by the Nolan rules, which are very clear rules on representation on public bodies. Where groups are ad hoc or short term, they are designed to achieve a result.

I know that all my colleagues will be open to suggestions if there are views about representation. I have always been mindful of that, and I am sure the same goes for Kevin Stewart.

Monica Lennon: On the point that Ross Greer raised about advice and schools, which is a topical subject, I seek clarity on the advice that the Government is acting on. The situation is that, acting on advice, we have regulations saying that children travelling on public transport will be socially distanced and that if they are over the age of five, they will have to wear a mask. Does the advice change for when they get to school, to say that they will not have to wear a face covering or practise social distancing within the confines of the school building? Is that the advice?

Michael Russell: We are not yet at the stage of issuing formal advice on that. John Swinney's announcement yesterday was a step—a very big step—in the right direction, and I am sure that you welcomed it, as all MSPs should. John Swinney will have to work with the committee and others to issue detailed advice; I am sure that he will want to talk to the committee about that.

Beatrice Wishart (Shetland Islands) (LD): Good morning, colleagues and cabinet secretary. I would like to ask about local lockdowns. We touched earlier on the situation in Germany, where an outbreak has pressed a county into local lockdown and schools have closed.

As the cabinet secretary might recall, I have previously asked whether local lockdowns are being considered as a possibility in Scotland. What is the Scottish Government's plan, having learned from the experience of countries such as Germany, if there are localised outbreaks here?

Michael Russell: "Route map for moving out of lockdown" makes it clear that the option of more localised lockdowns in the event of a recurrence of the virus has not been ruled out. I cannot go further than that, because the circumstances have

not arisen. However, the route map makes it very clear that if we were to have an identifiable outbreak, and the evidence and the advice were that it should be dealt with by means of a local lockdown, that would be treated very seriously.

With hindsight, we know that issues have arisen, as Beatrice Wishart knows well, given what happened in Shetland with the initial outbreak of the virus. All that I can say is that local lockdown is a tool that would be available.

Beatrice Wishart: I turn to a different subject. In response to Adam Tomkins, who asked about the communication strategy, you referred to ferries and the “interpretative difficulty” with regard to the regulations. The guidance that accompanied the phase 2 changes has caused some concern here in Shetland. It says that travelling to and from islands to visit family would be acceptable, but that individuals should consider whether they can do so while acting in line with the other parts of the guidance. For some of my constituents, that means that, if they go to see family and friends and arrive in Aberdeen in the morning, they have to leave to return home the same day. Islanders have been in touch with me to say that they feel that the restrictions are unfair and discriminatory. What is your response to those concerns?

Michael Russell: I had a meeting yesterday with Tìree community council yesterday, which is also concerned about those regulations. There is no option for people there to go and come back on the same day because of the current ferry timetable. That means that, although they are technically free to leave the island to have a socially distant meeting with family or friends—which we advise should be done sparingly—they cannot do so in practice, because they cannot stay away for the night elsewhere.

All I can say is that I am really keen that my, and your, island constituents have the same rights in coming out of lockdown. The First Minister made the point in her statement last week that they should have the same developing freedoms in coming out of lockdown as every other citizen. However, it could be and, in some cases is, much more difficult for some people—in particular, those who live on islands that are further away—to exercise that freedom. I regret that situation, but I cannot see a practical way to resolve it without changing the regulations, which would then have to change for the whole of Scotland, and we are not ready to do that yet.

I accept that people regard the current situation as unfair, and I know that it is hurtful, but I cannot see a way around it, given the nature of the regulations. We simply hope that the other regulations will change comparatively soon, and everybody will then be able to take advantage of the opportunity that others have now. People who

live on islands including Mull, Bute and, to an extent, Islay can take advantage of the change because they get come off the island and come back on the same day.

Beatrice Wishart: Thank you for that answer.

On a different subject, I have been in contact with constituents who are anxious to see their partner. Some have said that if they had known how long the restrictions of lockdown would last, they would have decided to live together. Forming an extended household is not possible for many people, including people who have flatmates. What advice has the Government received about relaxing measures in order to allow couples safely to spend more time together?

Michael Russell: The First Minister made it clear that she wanted to move on that as quickly as possible. Last week she said that some people would be very relieved by the changes, and that they would not affect others.

It is not difficult only for couples. There are people who are keen to visit relatives but cannot because they cannot form an extended family. We are very keen that that changes at the earliest safe moment.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I want to return to unrelated harms that come from lockdown, which came up earlier. I wonder whether the cabinet secretary would like to talk about the unrelated benefits that come from lockdown. I am thinking in particular of things like improved air quality in urban areas. We know that the number of asthma attacks in China halved, and so on. There has also been a reduction in noise in urban areas, and there is clear evidence that more people are cycling and walking, which have health benefits.

In order to provide balance, will the cabinet secretary talk about some of the effects on the other side of the balance sheet from increased mental health problems?

Michael Russell: The pandemic has been a very difficult experience for almost everybody—I count myself in that. There are ups and downs—periods in which things can seem bleak and periods in which optimism takes over. I suspect that that is true for virtually everyone.

Mr Stevenson is right to say that it is important to dwell on things that might move us forward in ways that we had not expected. Some of the things that he spoke about are important. People can go to extremes in situations like this. I understand that during previous pandemics significant figures wrote novels, symphonies and things of that nature. I have not yet written a symphony and think it unlikely that I will. However, people have had bursts of creativity and have

focused on doing things that they would not otherwise have done; people have learned languages, read more books, listened to music and spent more time with family, which they would not otherwise have been able to do.

There are also environmental benefits, in respect of which the way that people have organised themselves is interesting. I know of communities who have done that the length and breadth of Argyll.

The pandemic has also brought resilience groups to the fore; those groups have made arrangements for local purchasing of foodstuffs. There has been much more local shopping and much less reliance on driving 20 to 25 miles to the nearest supermarket. That has been immensely beneficial for some businesses that have done well. Many other businesses have, of course, suffered enormously. However, some have adapted to do new things.

I am not saying that there is a silver lining, but Mr Stevenson is right to say that there are benefits that we will reflect on, in time. One of them is what we are doing in having meetings such as this—despite the slight hiatus earlier today. Systems through which Parliament can work remotely were overdue. It would be beneficial—although not all the time—for members such as Mr Stevenson and I, who live a long way from Edinburgh, to be able to work remotely in the future. That is a positive thing that has come out of this for Parliament.

Although there have been major improvements in broadband across Scotland, the community of Glendaruel has not benefited as much as most; we want fast broadband here and everywhere in Scotland. As that improves and systems improve, we will be helped to do more remote working, which will help in maintaining some advantages, including the environmental ones.

The Convener: Thank you, cabinet secretary. That completes our questions.

10:14

The Convener: The next item of business is consideration of motion S5M-22097, in the name of Michael Russell.

Motion moved,

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 4) Regulations 2020 be approved.—
[*Michael Russell.*]

Motion agreed to.

The Convener: Thank you. The committee will publish a report to Parliament setting out our decision on the statutory instrument.

As we previously agreed to take item 3 in private, I now close the public session. I thank the cabinet secretary and his officials for their time this morning. I remind members that they will need to log in to the private meeting. In fact, they will not, as it has been confirmed that the business that we were going to deal with in private has been resolved. That is good news.

Meeting closed at 10:16.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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