



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Tuesday 28 July 2020

Session 5



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COVID-19 COMMITTEE
12th Meeting 2020, Session 5

CONVENER

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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:

Colin Beattie (Midlothian North and Musselburgh) (SNP) (Committee Substitute)

James Dornan (Glasgow Cathcart) (SNP) (Committee Substitute)

Jeane Freeman (Cabinet Secretary for Health and Sport)

Claire Meikle (Scottish Government)

Alex Rowley (Mid Scotland and Fife) (Lab) (Committee Substitute)

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

Graham Simpson (Central Scotland) (Con)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Tuesday 28 July 2020

[The Convener opened the meeting at 09:00]

Interests

The Convener (Murdo Fraser): Good morning, and welcome to the 12th meeting of the COVID-19 Committee in 2020. We have received apologies from Monica Lennon, Annabelle Ewing and Willie Coffey, and I welcome as substitutes Alex Rowley, James Dornan and Colin Beattie. We are also joined by Graham Simpson. I invite each of our substitutes in turn to declare any relevant interests, starting with Alex Rowley.

Alex Rowley (Mid Scotland and Fife) (Lab): I refer members to my entry in the register of members' interests.

James Dornan (Glasgow Cathcart) (SNP): I have no relevant interests to declare.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I have no interests to declare in addition to those that are mentioned in my entry in the register of members' interests.

The Convener: Thank you.

Subordinate Legislation

Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/188)

Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/201)

The Convener: For our first evidence session, we are joined by the Cabinet Secretary for Health and Sport, Jeane Freeman, who will give evidence on SSI 2020/188 and SSI 2020/201. The committee has received a number of submissions on the regulations, which are included in the papers for today's meeting.

I welcome the cabinet secretary and the Scottish Government officials David Williams, who is director of delivery, health and social care integration; Lorna Ascroft, who is the programme lead for reform of adult social care; and solicitors Carolyn Magill and Claire Meikle. I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Health and Sport (Jeane Freeman): Good morning. This is my first appearance before the COVID-19 Committee, and I am grateful for the opportunity to be here. I will be brief, because I am sure that members have a number of questions to put to me and my colleagues.

The Coronavirus (Scotland) (No 2) Act 2020 is an important part of our response to the coronavirus pandemic. As members know, it provides us with new powers in our collective work to control the spread of the virus and minimise its impact on people's lives. Of necessity, that legislation was put through Parliament rapidly. We have subsequently made regulations on social care workers and on care homes to support or implement the various powers that the emergency legislation contains.

On care homes, the overall purpose of the emergency measures is to ensure the swiftest possible intervention if the life or health of care home residents is being put at serious risk as a result of the coronavirus pandemic. The measures are intended to provide those who depend on such services, their families and the staff who deliver care with an assurance that additional oversight and support are available in the exceptional circumstances in which they might be required.

Following a period of consultation, we have brought forward the Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020 to supplement the emergency intervention provisions of the Coronavirus

(Scotland) (No 2) Act 2020 by ensuring that the Scottish ministers are in a position to exercise those powers. The regulations make it clear that, where a nominated officer is an officer of the local authority or a health board, they are acting on behalf of the local authority or health board. The regulations provide the nominated officer with the power to delegate actions and tasks to others, and allow the Scottish ministers to obtain information from relevant bodies where such information is required in the consideration of whether to exercise those powers. In addition, the regulations provide the nominated officer and the Scottish ministers with a power to recover costs from the provider, where appropriate, and make it clear that no claim for damages can be made against the Scottish ministers as a result of their exercise of, or their failure to exercise, their functions under section 65A of the Public Services Reform (Scotland) Act 2010.

As the committee will know, the Parliament accepted, and the Government supported, an important non-Government amendment to the Coronavirus (Scotland) (No 2) Act 2020 to establish a social care staff support fund. For the record, I am grateful to Monica Lennon for her work in that respect. Although the Scottish Government is not an employer of care staff, we are committed to fair work and are clear that social care workers should not face financial hardship because their employment terms and conditions do not meet the fair work principles.

The Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 make provision to establish, administer and maintain the fund. We have worked closely with employers, trade unions and the Convention of Scottish Local Authorities to develop the fund's criteria and administration arrangements. The fund provides support to staff who might otherwise face financial hardship when their social care work has been restricted and their income reduced because they have coronavirus or are self-isolating in accordance with public health guidance. The fund also supports infection prevention and control in care home settings and through care in the community .

The fund became operational on 24 June, and support has been backdated to 23 March for eligible workers who suffered financial hardship on or after the date when the emergency legislation came into force. Employers can pay staff their expected income when they are off work sick or self-isolating as a result of coronavirus, and the employer can then seek reimbursement from the fund. Reimbursement to employers is made through the local mobilisation plans that are in place with integration authorities or local authorities. Supporting guidance that sets out the process and the eligibility criteria has been

published on the www.gov.scot website and circulated to employers.

The committee will also be aware that, as well as introducing the regulations, we have established a death-in-service benefit of £60,000, which is paid to a nominated beneficiary where a social care worker dies in service as a result of coronavirus, regardless of what pension or other arrangements may be in place. That benefit became operational on 10 July.

The measures that I have set out reflect the combined efforts of all parties in working towards the shared goal of ensuring that we do all that we can, within our powers, to protect care home residents and their families and social care staff. Even so, I am sure that, as we continue to learn more about the virus and how it behaves and operates, we will understand more about what we can do. We therefore remain open to making further improvements, and we are committed to working with you, convener, and your committee colleagues to consider how we can do so. I thank you for this opportunity, and I look forward to the committee's questions.

The Convener: Thank you for that introduction, cabinet secretary. Members wish to ask questions about the support fund and the care home regulations. If you wish to bring one of your officials in at any point to help in answering a question, I ask you to name them first, as that will give broadcasting the opportunity to switch on their microphone at the appropriate point.

I start with a couple of questions about the care home regulations. The regulations grant Scottish ministers the power to authorise a nominated officer to take steps in relation to a care home where they are satisfied that it is essential to do so for a reason relating to coronavirus and to prevent an imminent and serious risk to the life or health of persons in that care home.

Scottish Care, which—as you know—is the umbrella body that represents care home providers, told the committee in its written submission that it is

“not convinced that there is sufficient rationale and evidence for the introduction of”

these regulations, given that

“Scottish Ministers already”

have the

“powers to enter into acquisition agreements for services where ... required”.

Scottish Care goes on to express its concern that

“this legislation risks being counterproductive”,

as it may cause

“alarm and distress for individuals and families in relation to the provision of their care, at what may already be a time of significant challenge.”

What is your response to that, cabinet secretary? Can you tell us whether these powers have been used thus far?

Jeane Freeman: I will answer your last point first: no, the powers have not been used up to this point. The powers are exceptional, and they are there to allow us to act swiftly. As you will see from the regulations, Scottish ministers can act in advance of securing court agreement, although the agreement of a court needs to be secured within 24 hours of acting, or ministers can go to court and then act.

To a certain degree, I understand the concerns that Scottish Care has expressed, but I do not agree that the measures will cause additional anxiety or upset to families, residents or staff. I think that they will provide individuals with additional assurance that, in the exceptional circumstances of a threat to life and limb arising in any particular care home, Scottish ministers can act swiftly in order to ensure that residents are protected. As I have said a couple of times already, the powers are exceptional and their use would be justified only in exceptional circumstances.

The Convener: Thank you for that response, cabinet secretary. This morning, as you may well have seen, the BBC reported on some investigative work that it had carried out, which showed that, between 3 and 17 April, the Care Inspectorate issued 179 red and amber notifications warning of staffing shortages in care homes. Of those, 30 were red warnings, in which it was claimed that there were insufficient staff to properly meet residents’ needs, and 149 were amber alerts. Those notifications were issued during a period when many homes were under pressure to receive patients who were being discharged from the national health service, and who we now know were coming into care homes without having first been tested for Covid-19.

That report has caused a great deal of concern in the sector, and concerns have been expressed for both care home residents and their families. What is your reaction? Is there anything in what is being announced today that could help the situation in the future?

Jeane Freeman: I will make a couple of points in response. First, I have not seen those reports, and more importantly I have not seen the evidence to back them. I briefly saw the news coverage this morning, but I have seen no more detail. On that basis, I cannot comment further on the work that the BBC has undertaken, although I am sure that we will come back to it on future occasions.

I do not accept that, during that period, care homes were under pressure to accept people who were coming out of hospital. There has always been an obligation on care homes and hospitals to undertake a clinical assessment of an individual’s readiness to be discharged. As we all understand, and as we have debated and discussed many times in the Parliament, it is not ideal for anyone, especially an elderly citizen, to stay in a hospital setting longer than their clinical need for treatment requires.

The clinical assessment relates to not only a patient’s readiness for discharge, but the appropriateness of the setting to which they would be discharged. It is in a care home provider’s interests to ensure that it is ready to receive the individual and that it has in place all the appropriate measures and steps, including arrangements for any on-going medical care that the person may need. I am reluctant to accept—in fact, I do not accept—that care homes were under pressure to accept anyone. Of course, matters have changed since that time, and we have been learning as we go.

On the issue of flags relating to staff shortages, I do not have to hand the exact dates that you mentioned, but for at least part of that period we had the portal available. That enabled us to make available to care home providers a significant number of experienced social care staff, who could be used if rotas were in jeopardy or a little unstable, or if additional staff were needed to implement the guidance that we issued on additional infection prevention steps and the control measures that care homes were obliged to put in place.

In the absence of detailed information, it is not possible at this point for me to check whether there was a particular demand during that time in respect of the availability of volunteer returners, but I would certainly want to look into the matter.

09:15

The Convener: Thank you, cabinet secretary. I appreciate that the news to which I referred came out only this morning, but I am sure that either this committee or the Health and Sport Committee will want to probe the issue further in the future.

We will move on; I will bring in Stewart Stevenson.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I start by declaring that I have a close family member—[Inaudible.]—in the sector.

How will the Government measure the effectiveness of the support that it provides to social care staff under the regulations? Will any

reporting be published on the conclusions about the effectiveness of that support?

Jeane Freeman: Those are important questions. The fund is, in effect, currently operating in real time. My officials regularly engage directly with COSLA, the unions and employers to look at whether administrative arrangements need to be improved and whether employers need to be given any additional information to ensure that they can access the fund.

We also want to ensure that employees know that the fund is available. GMB is undertaking a survey of its members. As the committee may recall, Unison and GMB were particularly strong champions of such a fund, as some of their members were reluctant to be tested for Covid in case they were found to be positive and were required—quite rightly—to self-isolate, resulting in a significant reduction in their weekly income.

We are, of course, gathering data as we go. We are focused on ensuring that the fund is available and is being used, and that all proper administrative processes are as simple, straightforward and speedy as we can make them. As we gather that data, I am happy to look at how we might publish on demand information relating to the fund, including how we have addressed any problems in delivery that have been raised with us and the speed with which we have been able to do so.

Further evaluation of the fund's impact has not been considered at this point, but I am happy for consideration to happen in due course. Right now, our focus is on ensuring that the money that is available gets to those who need it.

Beatrice Wishart (Shetland Islands) (LD): As has already been alluded to, the social care staff support fund should ensure that relevant workers do not experience financial hardship because of being ill with the virus, but it will not address the financial hardship that is already being experienced by social care staff across Scotland. The pandemic has exposed the vulnerability of the social care sector overall. Staff are on low wages and some are on precarious contracts, with or without the virus.

My colleague Willie Rennie has already asked whether a review of pay and conditions for all social care staff will be undertaken in the light of the situation. The First Minister said that that was being considered. Will the cabinet secretary provide an update on that?

Jeane Freeman: That is a very important area. I share your view that the pandemic has highlighted a number of issues in the provision of adult social care, some of which the Government had begun to work on in advance of the pandemic. It was

necessary to pause that work to some degree, but the work that had been undertaken was important, because it directly involved those on the receiving end of adult social care and their views.

I am keen that we pick that up, in what I think should be a wider review. I have said on the record in the chamber that, as a country, we need to have a wider review of adult social care—how it is organised, delivered, funded and regulated—in order to ensure that we address some of the issues that are not new but have been thrown into sharp relief by the experience of this pandemic. Inside Government, we are working to look at the scope and range of that, and I hope that we will be able to update Parliament in the near future.

Beatrice Wishart: On data on care homes, the regulations establish an exceptional power to take control of care homes where necessary. Given the current balance between privately and publicly run homes in Scotland, I am interested in the monitoring that the Scottish Government undertakes that would inform such a decision being taken.

Does the Scottish Government hold and monitor data on the number of people who are resident in care homes in Scotland, and on the number of virus-related deaths in care homes?

Jeane Freeman: Yes. We know the number of care homes across Scotland, and the mix of private, local authority and third or independent sector providers. We also have the Care Inspectorate's information about their unannounced and announced inspections. Weekly, National Records of Scotland publishes information that splits the numbers of deaths in Scotland by location, which includes care homes.

Through the additional work that we have put in place, which our directors of public health are leading on, we have information on the number of care homes that have an active case at any point in time. The absence of an active case of the virus for 28 days is one of the criteria that have permitted some care homes to open up visiting in the next phase of our plan for a return to full visiting.

Beatrice Wishart: It has been reported that the Care Inspectorate and the Scottish Government have refused to share the number of virus-related deaths in care homes that has been reported to them. The BBC report says:

"The government said data needed to be accurate and published in a way that protected people's right to confidentiality."

Can you elaborate on why the information will not be made public?

Jeane Freeman: Information on the number of Covid-related deaths—where Covid is either the

cause of death or a factor on the death certificate—is reported weekly by National Records of Scotland. That reporting is based on death certificates, so it is very robust data. It is clinically signed off and published weekly.

The data that the Care Inspectorate receives is from individual care homes and it may or may not have a clinical underpinning. That is not robust data; it is data in which a care home says to the Care Inspectorate that, for example, Covid was a factor in the deaths of two of its residents who died during a week. That is not a clinical judgment—that does not mean that it is wrong, but it is not a robust judgment.

The data that we publish—and the Scottish Government publishes a great deal of data—has to be statistically sound and robust, and able to be evidenced. That is why, in this instance in particular, the NRS data is the most reliable, and, as I have said, it is published every week.

Adam Tomkins (Glasgow) (Con): I have two questions about the emergency intervention orders regulations, and a more general question about the relationship between health and sport.

The convener touched on this point in his opening question, but it was not clear to me what the answer was. Why are the emergency intervention orders regulations necessary at all, over and above the common-law powers that Scottish ministers already have? What is it precisely that you are able to do under this legislation that you are not already able to do with pre-existing powers?

Jeane Freeman: I will say a little, then I will ask one of my legal colleagues, Claire Meikle, to respond in a bit more detail.

In essence, the legislation allows us to move very quickly indeed. It currently remains subject to a court decision, but it will allow ministers, in a pandemic situation in which life and limb is under threat, to move very quickly to ensure protection for residents in a care home. Speed is the essential element that will allow us to act without undue process to ensure that, where there are threats to life and limb resulting from poor infection prevention and control, cleanliness behaviours or whatever else, we can act very quickly—subject to proper information and evidence, which we would have to bring to court to justify our action—in order to ensure that residents are protected. That is different from the normal course of events, in which the process is slightly longer. My colleague will be able to provide you with more informed detail than I can give.

Claire Meikle (Scottish Government): The position with the emergency intervention orders is that where there is an imminent and serious threat to life or health in a care home, a nominated

officer or the Scottish ministers will be able to enter and occupy the accommodation to direct and control the provision of the care home service and do anything that is considered necessary to ensure that the service is provided to an appropriate standard. Those powers are not available under common law. The Government's position is that emergency intervention orders are necessary to ensure that, in extreme situations where there is a serious threat to life in a care home, protection can be provided.

Adam Tomkins: As I understand it from the cabinet secretary's answer, under the regulations ministers will be able to do nothing substantive that they are not already able to do; the difference is that they will be able to act more quickly. We have just been told that the powers are necessary, but we have also been told that they have not yet been used, which calls into question the extent to which they are in fact necessary.

I will move on to ask the cabinet secretary about accountability in the event that the powers are exercised. As we have just heard, the regulations will mean that the Scottish ministers may intervene directly in the leadership and management of care homes. However, care homes are primarily accountable not to the Scottish ministers, but—as I understand it—to health and social care partnerships within the national health service and local authorities. How will the cabinet secretary ensure, in the event that the powers are exercised in the future, that we as parliamentarians, and the public, understand exactly where the lines of accountability lead? Is it not the case that exercise of the powers will inevitably blur the lines of accountability, which are currently quite well established?

09:30

Jeane Freeman: No, I do not accept that at all. If Scottish ministers acted to use the powers, they would be accountable to Parliament for their actions. I am sure—in fact, I am certain—that Parliament would exercise that accountability to understand and scrutinise the basis on which the Scottish ministers acted, the evidence on which they had to act, and their justification for doing so.

I also do not accept that the absence of use of the powers at this point makes the legislation unnecessary. If, for example, a care home provider is not willing to undertake the necessary critical improvement actions that the Care Inspectorate requires and the Care Inspectorate's view is that residents are at serious risk, we need to be able to act to protect residents in those circumstances. The powers are to ensure that we can. The Scottish ministers have an ultimate responsibility to protect the lives of our citizens, which is at the core of what the powers are about.

Of course, the Scottish Ministers are directly accountable to Parliament and, consequently, the electorate. I therefore do not think that the legislation blurs the lines of accountability at all.

Care homes are accountable to the local partnerships for delivering the services for which the partnership may have provided them with funds. However, they are also accountable to the Care Inspectorate in relation to whether they meet the requirements of registration. As the committee knows, we have an on-going situation in which the Care Inspectorate believes that a registration should be removed.

Although care homes are regulated in a number of areas, in this particular instance, the Scottish ministers believe that we require the capacity to act swiftly in order to protect the residents of a care home in exceptional circumstances.

Adam Tomkins: I have detailed questions on the public health regulations that I want to ask Mike Russell when he is front of the committee later this morning. However, given that this is the first time that you—as the Cabinet Secretary for Health and Sport—have been in front of the committee, I will ask a general question about the coherence of the provisions that the Government has put into place in relation to the easing of lockdown restrictions. Specifically, given the portfolio that you represent, how is it coherent to have allowed pubs to open, but not gyms?

Jeane Freeman: As the committee will know, the Government as a whole reaches a view about the various phases of easing lockdown through the process that we set out in relation to whether we meet the World Health Organization criteria at each stage. An assessment of that is made, and the Cabinet as a whole reaches a collective view on that.

In all of this, we are consistently attempting to protect public health and balance the steps that are necessary to protect against the other harms that we know that the pandemic has caused. The virus causes direct harm, of course, but it also causes other health harms such as the pausing of work that would otherwise be undertaken on elective procedures and so on, and increasingly there is recognition of a decrease in wellbeing and a rise in anxiety in the population. Other harms, such as economic and educational harms, are also caused.

The balance therefore needs to be struck across all those areas, and that is what the Government tries to do. Inevitably, in all those circumstances, there is no perfect solution. We receive a series of clinical and scientific advice, and judgments are then made by the Cabinet as a collective body about what we will do.

Shona Robison (Dundee City East) (SNP): Good morning. I was going to ask about the independent evaluation, but I think that the cabinet secretary addressed that when she responded to Stewart Stevenson, so I will ask a slightly different question, about the support fund.

Is there a mechanism within administration of the support fund to pick up cases of what might be described as poor employment practice that could lead to reduced or restricted income for staff, who then have to apply to the support fund? Is there a way of picking up and addressing such issues, if they are driving staff towards the support fund?

Jeane Freeman: That is a very interesting and important question. As I said, the work that my officials are doing with the relevant trade unions and employers is focused consistently on how the fund is being disbursed, used and administered, and on trying to resolve glitches, as we go.

As we do that, we are, of course, collecting data. The survey that the GMB is undertaking should produce information not only on how care home workers feel about accessing funds through their employer, but on particular situations that those workers might find themselves in. We will benefit from that information.

From time to time, we might also identify areas of poor employment practice, to which Ms Robison referred. We will take careful note of that. All that information will feed in to the work that we are currently scoping that will look at adult social care in the round—its organisation, delivery, funding and regulation.

In some areas of fair work and fair work principles—to which, of course, we as a Government are committed—there is a degree of limitation in what we can do, because the Scottish Parliament does not have powers over employment law. However, there are areas that we can highlight in which I would expect significant improvements in practice. Also, the fair work group is looking at social care. I expect it to feed in to all that consideration.

None of that need take very long; it is part of what we are undertaking.

Shona Robison: That is very helpful.

Is it fair to say that if—God forbid—we were to end up in a second wave of Covid, the evaluation and the data gathering that are taking place could enable changes to regulations? Having learned from experience of how the fund is operating, would you hope to make changes, should we require to have something like the support fund again in the future?

Jeane Freeman: Yes, absolutely. I hope, as Shona Robison does, that we do not have a second wave of coronavirus, but she will know that

all our current planning includes preparation to ensure that we have the capacity to respond to one, should it arise. That preparedness covers not just the health service—although we are doing that, for example, by retaining NHS Louisa Jordan, which we use at the moment for other areas of healthcare.

It is also about ensuring that, in terms of social care—including care homes, care at home, supported housing and other areas—we have the right plans in place. That includes looking at what improvements we might sensibly make to the fund, should we need to continue it.

The Convener: Does that answer your question, Shona?

Shona Robison: That was fine.

The Convener: Thank you. I call Colin Beattie.

Colin Beattie: I will pick up on a couple of issues from the submissions on the social care fund. I am looking at the submission from NHS Ayrshire and Arran. There seems to be some concern about the eligibility criteria for casual workers. NHS Ayrshire and Arran is making the case that casual workers should be treated equally. Is that being looked at?

Jeane Freeman: I am not sure whether NHS Ayrshire and Arran is referring to agency staff; that concern might be about casual workers who are secured through agencies. Agency contracts make it difficult for us to ensure that we are getting the right evidence from the employer on whether to justify payment from the fund. In line with what I said to Shona Robison, we remain open to finding out where improvements should be made to the fund, and would be happy to consider other staff. That is the situation at the moment.

The decision about which staff are eligible for the fund came from detailed discussions involving the relevant trade unions, COSLA and the employers. It was not exclusively a Scottish Government decision; a collective decision was reached to determine which workers would and would not be covered. I repeat that I remain open to reviewing whether that should be extended at any point.

Colin Beattie: It is a concern if anyone is being left out and is not getting the support that they need.

I have one more question. The submission from the Royal College of Nursing calls for the guidance to be amended so that staff who are shielding but who have not been placed on furlough are eligible for financial support from the fund. That seems to be obvious. Are you actively considering that?

Jeane Freeman: Employers should have access to the coronavirus job retention scheme. It

has been accessed by the majority of employers and should be accessed for staff who are shielding. That is why staff who are shielding were not placed in the group of eligible employees when the support fund was created.

Now that the cut-off point for employers to access the support fund has passed, I am content to look at whether it should be extended in such circumstances. I would have to understand why employers had not accessed the appropriate support to cover their responsibilities for employees who have been shielding.

Colin Beattie: The Royal College of Nursing says that that small group of staff has fallen through a gap, and that those staff are not eligible for support from the coronavirus job retention scheme, or from the new fund.

Jeane Freeman: I have seen the RCN evidence and my officials are discussing the matter with the RCN. As I said, I am happy to consider whether we should extend the groups of staff who are eligible for the fund.

Alex Rowley: Colin Beattie made a point about the RCN. My reading of what the RCN says is that a number of employers were not keen to furlough staff who were shielding. The decision was made by employers, and the cut-off point was in June. Can the cabinet secretary give a clear commitment to look at the evidence and to discuss the matter with the RCN? The RCN is clear that the guidance should be amended.

In her response to Shona Robison, the cabinet secretary said that, from time to time, we find poor employment practice, and that we will tackle that. However, the submission from Unison Scotland says that

“Poor staffing practices are still widespread in the sector”,
which

“means that large numbers of staff have no access to proper sick pay protections.”

It goes on to say that it is

“a signal failing that so many employers are still denying staff the payments which make the difference between having to risk their own and their clients’ health.”

Do we have an up-to-date position? According to the evidence from Unison, many care providers, particularly in the private sector, continue just to pay sick pay—[Inaudible.]

Does the cabinet secretary have evidence of that?

09:45

Jeane Freeman: I do not have that detail with me; I am happy to write to the committee to follow that up.

However, I know that the real-time consideration of problems that arise involves the unions. Where any union or other party has evidence that an employer is continuing to pay only statutory sick pay and is not accessing the fund, we want to know that so that, with the employer, we can try to understand what is stopping the employer from accessing the fund. It is free money to the employer: the Scottish Government is using public funds to top up, when the contract of employment allows for only statutory sick pay.

Therefore, I cannot see why an employer would not want to access that additional financial support in order to ensure that an employee is not financially penalised for following public health guidance and undertaking the weekly testing of care home workers that we now have in place. That weekly testing contributes directly to infection prevention and control, and I cannot understand why a care home provider would not wish to co-operate with all possible steps to ensure that infection prevention and control are of the highest possible standard.

Where we have such information, we will discuss the problem directly with the employer or through the umbrella body—be it Scottish Care, COSLA or the Coalition of Care and Support Providers in Scotland—so that we can resolve it so that the individual care worker receives the financial support that they should receive. The point of the fund is to make sure that workers are not financially penalised. We do not ask employers to provide the additional money; the Government is providing it.

Of course, that goes to the heart of some of the arguments, which Mr Rowley would agree with, for an independent review of how our adult social care is organised, delivered, funded and regulated, so that we can be more confident that fair work principles are enacted across the whole sector. They are enacted in many areas of the sector, but not in every part.

That bigger question needs to be addressed in a different way, but in terms of operation of the fund, I want us to be aware of such instances and to try, as best we can, to resolve them.

Alex Rowley: For the life of me, I cannot understand why the situation that I described would exist either, but it is important that the Government establishes the facts and does so quickly. Because it is a stark statement, I repeat that Unison Scotland says:

“Poor staffing practices are still widespread in the sector”.

Surely that cannot be acceptable.

The Coalition of Care and Support Providers in Scotland, which has also provided a submission,

suggests that employers do not have confidence in the funding arrangements, given previous experience. It states:

“Providers’ experience to date of other funding arrangements put in place during the pandemic, notably the Living Wage national uplift and provider sustainability funding, suggests that confidence levels among providers may be low in this regard.”

Whatever the reason for that, can you assure the committee today that work will be done immediately to establish the number of employers that are refusing to participate in the scheme? Ultimately, it is the carers and the quality of care that suffer as a result of that, so will you give that guarantee?

In response to a question from Murdo Fraser, you said that, where people have been moved out of care homes, a clinical assessment will have been made in every case and an assessment of the appropriateness of the care home for the individual will have been made. I assume that any inquiry that takes place will be able to access and look at that evidence.

Only this week, NHS Fife told me that it does not have any records of the numbers of people who were moved from a hospital setting into either a community hospital or a care home without being tested. NHS Fife said that it just does not have that data. I assume that the data that is available around the clinical assessment and the assessment of appropriateness for people to be moved into care homes will be made available to any investigation into the care homes tragedy that has taken place.

Jeane Freeman: My answer to Mr Rowley’s first question is yes. I can give an assurance that, where I am given information about a care home provider refusing or choosing not to take part in and access the fund to the detriment of their employees, we will engage with that employer and try to resolve the problem. I point out that I meet Unison fortnightly and it has brought to me no specific information on that matter. However, I give an assurance that, as soon as it or anyone else does that, we would consider and investigate the matter and look to engage directly with the employer in order to resolve the problem.

We supported the amendment to the Coronavirus (Scotland) (No 2) Bill and we support the fund. We set it up within about a month of the act coming into play and we are anxious to ensure that staff are not penalised for following public health guidance and good infection prevention and control, which is of course what lies at the heart of all of this.

What I said in response to the convener was that a clinical assessment should be made both at the hospital end and in conjunction with the care

home in order to ensure that it is able and has the capacity to give proper care and support to the individual concerned. That is an important difference in wording. Of course, I do not do all of that—I am not engaged in the discharge processes for patients in every single hospital. My point is that that is what should happen and what I expect to happen.

The information would be part of the patient record, as you would expect. When the individual goes into the care home, up-to-date information goes with them on all their healthcare, the reason why they were in hospital, their treatment and, if there is on-going management of their condition, the medication that they are on and so on. In the patient record, there should be a note of the assessment being done at the hospital and the conversation between the hospital and the care home.

If that information is available, it should of course be made available to any inquiry into these matters, provided that it does not identify any individual.

Alex Rowley: The evidence is there in the submissions and I hope that it will be acted on. It is clear from those submissions and others that social care in Scotland is in a depressing state. If we have another wave of coronavirus, are you confident that care homes are now better equipped and have the support in place to ensure that we will not face the tragic situation that we faced with the high number of deaths that occurred in care homes in the first spike of the virus?

Jeane Freeman: Since 19 March, I think, care homes have been eligible to receive and have been receiving personal protective equipment directly from our NHS procurement service. When it comes to the stockpile and the volume of equipment that the procurement service holds, it is now much better placed from the point of view of PPE supply than it was under the previous modelling in the first phase of the pandemic. We are of course still in that first phase, but the procurement service is now able to upscale its ordering and its stockpiling in readiness for any subsequent increase in the prevalence of Covid.

As well as the work that has been done on the supply of PPE, guidance has been provided on its use and staff training has been undertaken, which has directly involved the directors of public health and our nursing and medical directors in each health board area. Care workers in care homes have received and continue to receive training in the appropriate use of PPE. The guidance is clear. There is now a strong connection between the care home sector and primary care through the directors of public health.

In addition, we have taken steps to ensure that we retain a pool of experienced, returning social care staff who are ready to be deployed to assist care homes in the event that their staff rotas become unstable. There is also the safety huddle tool, which has been developed from well-established work in the NHS. The application of that tool in the care home setting will allow real-time data to be made available to care home providers—and to the Care Inspectorate, Government and local partnerships—on the preparedness and readiness of individual care homes at any given time from the point of view of staffing, resourcing and the availability of supplies.

As we have moved through the first phase of the pandemic, we have applied the lessons that we have learned, and we are now in a much better place should there be a significant increase in the number of cases. Our surveillance work has been scaled up, too. We are moving towards a more predictive approach. For example, we are using NHS 24 call numbers to give us a clearer indication of where we think that spikes in cases might arise. Test and protect is now well in place and under way.

A number of measures have been put in place and steps taken that I think will equip us well in the event that we experience a significant increase in the number of cases in care homes or anywhere else in the country. Strong working relationships have been developed with all the key partners that are involved, including the unions, and there is direct weekly, if not daily, contact with our health and social care partnerships, the unions and the providers, as well as with people across the NHS.

10:00

James Dornan (Glasgow Cathcart) (SNP): We talked earlier about regulations being put in place for Scottish Government interventions in care homes. Is the Government prepared for the possibility of taking over failed care homes?

Jeane Freeman: That will always remain an option if it is absolutely required and if no other interventions or steps have been successful in protecting residents in exceptional circumstances of life and limb. My proper answer is that I have not turned my face against that option; it is there as an absolute backstop.

James Dornan: Have you had any engagement with the sector? Have you told it the limits that care homes will not be allowed to go beyond? If you have had that conversation, what was the sector's response?

Jeane Freeman: I have regular conversations with Donald Macaskill from Scottish Care. They usually take place fortnightly, but they can be more frequent, depending on the circumstances.

He is also actively involved in our care homes rapid action group and is engaged with the clinical and professional practice group. He is well aware of our thinking, but he also has a great deal of input to its development.

I have not had a formal conversation with Scottish Care or any other organisation about taking over care homes as an absolute backstop, but I think it is clear that that is our position. The vast majority of the sector delivers high-quality care very effectively. The key is that the sector, with our support, ensures that that is the case across 100 per cent of our care homes regardless of whether the provider is in the private, independent or public sector.

The Convener: As members do not wish to ask any further questions, I thank the cabinet secretary and her officials for their time this morning.

There will be a brief suspension before we move on to the next evidence session.

10:03

Meeting suspended.

10:07

On resuming—

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 5) Regulations 2020 (SSI 2020/190)**

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 6) Regulations 2020 (SSI 2020/199)**

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 7) Regulations 2020 (SSI 2020/210)**

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 8) Regulations 2020 (SSI 2020/211)**

The Convener: I welcome the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell, who will give evidence on the four sets of health protection amendment regulations that have been laid since we last met. I also welcome Rebecca Whyte, who is responsible for 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 give evidence. I want

to talk about the several sets of regulations that amend the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, which are more commonly known as the lockdown regulations.

On 9 July, the Scottish Government published an updated route map, which gives an indication of the order in which we will carefully and gradually seek to implement the changes in phase 3 of the route map. The First Minister announced the outcome of the fifth review of the restrictions and requirements that are set out in the principal regulations on 9 July. The outcome of that review and the assessment of the evidence was that it was appropriate to move to phase 3 of the route map to easing lockdown.

As a wide range of different policy areas were covered, it was necessary to consider a wide range of amending regulations to give effect to various aspects of phase 2 and phase 3 of easing lockdown. The Scottish Government laid amending regulations by way of the made affirmative procedure on 26 June and on 2, 9 and 14 July. Those amendments entered into force on various dates. A plenary vote on amending the regulations is planned for this week.

The amending regulations make a wide range of adjustments to the principal regulations in areas where the decision to implement further aspects of phase 2 and the move to phase 3 of easing lockdown necessitates a change to the restrictions on businesses and individuals. Given the number and detail of the amending regulations, I do not propose to set out all the policy changes in my opening remarks. Following the negotiations, a range of businesses have been allowed to reopen, including hospitality and retail businesses; public worship and various ceremonies, including marriages and funerals, have recommenced; the number of households that members of a household can meet indoors and outdoors has increased; and some of the restrictions on gatherings have been relaxed.

As set out in the updated route map, there are some proposed changes in phase 3 for the coming into force of which we have not set a specific date. The current expectation is that phase 3 may well last for more than three weeks, but we will keep that under review. The next review date for the regulations, as people will know, is 30 July—this Thursday—when the First Minister will provide an update to Parliament.

I hope that those brief comments set the scene, and I will be happy to answer any questions.

The Convener: Thank you, cabinet secretary. As you said, a wide range of issues are covered by the various regulations that are before the

committee, and I know that members want to address a number of diverse issues.

I will start by asking about the introduction of the wearing of face coverings in shops. That measure was introduced and made a legal requirement, unless individuals have a reasonable excuse not to wear a face covering. The requirement has now been in place for approximately two weeks. Anecdotally, there appears to be a high level of compliance, but are you able to share any information that the Scottish Government has about the level of compliance among the public? Given that the police can issue fixed-penalty notices to individuals who do not comply, is there any information that you can share with us on the level of non-compliance? Can you tell us how many notices have been issued?

Michael Russell: I would want to provide the committee with fully accurate information, so I will make inquiries. However, as far as I am aware, there has been only one case of a notice being issued. I think that that is because of the very high level of compliance that we have seen in every part of Scotland, which is absolutely commendable.

Of course, there will be an assessment of compliance. That can be done in a variety of ways, and I am sure that the committee will be provided with information on that as that assessment takes place. I know that there are people who find the requirement to wear a face covering difficult and have objected to it on a variety of grounds, but the increasing usage of such a requirement worldwide is an indication that people recognise that wearing a face covering is important. Of course, I will be happy to provide the committee with the information when it comes to hand, as I will say several times during the course of this evidence session.

The Convener: I have noticed, and it has been drawn to my attention by constituents, that following the introduction of the compulsory wearing of face coverings, large shops such as supermarkets that previously had quite strict rules on social distancing—which took the form of one-way systems or restrictions on the number of people who could enter the shop—seem to have relaxed those rules as a consequence.

Do you have a view on that? Do you share my view that relaxing restrictions in that way might be a little too ambitious? Are we putting too much faith in compulsory face coverings?

Michael Russell: There should be no such relaxation. It is not a case of either/or: the regulations are entirely clear about that. The 2m default position remains in place; there have been changes to that for retail and hospitality premises, providing that certain very strict conditions are

met. If there has been such slippage—I have no evidence of that and have not observed it—it should not be taking place.

The requirements are in place for very clear public health reasons. They are not optional. As I have often said in my evidence to the committee, which I have given regularly, at the end of the day they are about saving lives; they are certainly about ensuring public health. If what Murdo Fraser has described is happening, I hope that it does not continue.

The Convener: I have a final question before I bring in Stewart Stevenson. Although face coverings are compulsory for people who are shopping, I do not believe that they are compulsory for shop workers. Do you think that face coverings should be compulsory for shop workers, too?

Michael Russell: Obviously, there are other precautions in place for certain shop workers—for example, there are screens in place that shop workers are behind. Some shop workers are wearing face coverings all the time when they feel that it is necessary to do so. That is an issue for the shop and the workers themselves, but the default position should be—unless somebody has a valid reason for not doing so—that face coverings should be worn. The matter will be judged somewhat differently for shop workers, given that there are other precautions in place, and according to where those workers are working and what contact they have with the public. I would certainly expect that, where workers have contact with the public normally, one would want to make sure that staff wear face coverings, as I understand one sees in restaurants and bars.

10:15

Stewart Stevenson: In your responses to Murdo Fraser, you used the term “very strict conditions” in relation to 1m distancing—I think that you were talking about pubs and restaurants. Another condition is that those establishments record contact details for customers so that, in the event that tracing is required, the people who might need to be contacted can be found. I am hearing quite a lot of feedback that that seems to be working a lot less well than some of the other bits of the system. I wonder what the Government’s view is on that.

I will describe my single experience of having visited a pub. The only sign was a little sticky label on the table top, written in quite small print, which asked me to email my contact details to a given email address. I nearly missed it, and I had thought that I was being particularly careful.

How does the Government view how the collection of contact details is actually working?

Michael Russell: That is something that we wish to happen, and it is very important under the test and protect programme. There is guidance as to how it should happen, and it is not onerous. If there is a group of people, one of them should be the contact person, and their email address and phone number should be used. That is a necessary part of what should take place. Therefore, we would want the guidelines on that to be followed, to ensure that it is done in a thorough way and that the information is readily available.

There are guidelines, and I encourage all businesses that require to look at them to do so. The gathering of that information is a condition of being able to relax the 2m rule to 1m in certain very limited circumstances. Those circumstances are very limited, and the condition is one that should be applied.

Stewart Stevenson: Such information will be used when necessary by the tracing system that we have in place. Are we yet in a position to get any meaningful understanding from the tracing people about the existence or otherwise of gaps in the information that is gathered in places where the 1m rule is permitted under the rules that you have just delineated?

Michael Russell: When the information about the success or otherwise of the programme comes to hand, it should be provided to the committee, so that the committee can look at it and come to some conclusions on it.

I have no indication that the programme is simply not being used. As far as we are concerned, it is being used, and it should be used as effectively as possible. I stress that it is not an optional programme; it is absolutely essential for people to observe the measures, as the programme should allow public health concerns to be answered when there is a need to use it for test and protect.

It is important to explain to people why the measures are necessary. Businesses should not only collect the information; they should be able to tell people why that is necessary. They should display notices on their premises or website outlining that. The Scottish Government has provided a template to help with that.

The programme is voluntary, but it is crucial to ensure that it happens. It has to happen. We have published a privacy notice that sets out how the data should be gathered. Each business will be using the lawful basis of legitimate interests. People have the right to object and to have their data erased after a period of time, as you know—I know that you know the subject of data control very well.

In cases in which an individual is not willing to provide the data, it is for the business to decide

whether to make services available to that individual or to refuse entry or a booking. We have tried to be as flexible as possible, but it is very important that that happens, because if it does not happen, lives can be put at risk.

Beatrice Wishart: Good morning, cabinet secretary. Stewart Stevenson has asked the questions that I was going to ask about data gathering, and you have given your answers to them. I would comment that there appears to be some variation in the information that is being gathered.

Some businesses are already struggling to make additional investments in protective measures. Do you have any information on what proportion of businesses have been able to adapt their working in line with the new rules? Do you think that the rules are sufficiently clear for businesses that are making such adaptations?

Michael Russell: I think that the rules are sufficiently clear, but help and advice is always available. As you and I know, people will approach us, as constituency MSPs, to seek additional information, which we can try to find. I have been impressed by how proactive the trade associations in the hospitality and tourism industry have been in making sure that people understand how things should be done. The information that I have heard—which is anecdotal, because it is early days—is that adaptations have been applied. However, it should be stressed that, when it comes to moving from the default position of 2m to 1m in certain limited circumstances, the meeting of the requirements is not optional. Without observing strict conditions, businesses cannot make that change.

Beatrice Wishart: Thank you for that.

I want to touch briefly on the tourism industry. I am still getting cases of concern from people with self-catering businesses, who are not clear on what would happen if a guest took ill in their accommodation. Can you provide any further information on that? For example, would there be a cancellation fee or would their visitor be liable for any extra accommodation? What happens if they are on holiday and they are unable to pay?

Michael Russell: Those circumstances would have to be dealt with individually. Like you, I represent a large number of islands. There are specific issues around what would happen if people who are on vacation on islands are taken ill.

There is a supplier of last resort for accommodation; as I understand it, if no other arrangements could be made, the local authority would have a role. That information can be given to tourism businesses. However, no one is saying that that is without difficulty; it is one of the

difficulties of moving on from where we are. I have been involved in giving a lot of information to businesses on islands in my constituency, which have the added difficulty of the fact that people returning home cannot travel by ferry. It is up to individual businesses to seek that information on those issues. There is guidance online. The trade associations also have that information, and I am sure that the Government will provide more if it is requested.

Adam Tomkins: Good morning. I have two sets of questions for the cabinet secretary, which I ask on the basis of a lot of sustained constituency correspondence from people in the Glasgow region who are concerned about aspects of the regulations that we have been talking about this morning. The first set of questions relates to places of worship and the second set relates to gyms.

On places of worship, in the past two weeks a number of churches and people who would like to worship in those churches have written to me to ask why, regardless of the size of the place of worship, a capacity of 50 has been imposed on all places of worship.

Michael Russell: That is the maximum number in order for distancing to be observed. The faith communities were involved in discussing that. It is not easy for any congregation to accept that there is a limit on numbers, just as it is far from easy for people who are suffering bereavements to accept that there will be a reduction in the number who can attend a funeral, or in happier circumstances, for people to accept reduced numbers at weddings. The number is regarded as the safe number. I am not privy to all the scientific discussions, but the decision on the number came from detailed discussion among a range of scientific advisers.

If Mr Tomkins wants more information on that, I am happy to ask that more information be provided to him on the actual detail of how the number was arrived at. I am sure that it is—of course—a compromise, but it is regarded as one that is necessary. We hope that the number can be increased as confidence grows that we have the virus under control, but it is a safe and sensible compromise, at this stage.

Adam Tomkins: I understand and appreciate that, as Mr Russell knows. However, we do not have the same approach in relation to retail. Every shop has calculated, for its own shape and size, the safe number of people that can be permitted in that shop at any one time. As we all know, we have staff standing outside shops, counting people in and out to ensure that at no time is the number exceeded.

If we can do that for shops, why cannot we do it for churches? There are a number of churches in Glasgow in which it would be perfectly safe to accommodate more than 50 people at one time. We have in Glasgow a number of churches that are so large that even with social distancing at 2m—never mind 1m—you could get more than 50 people in safely. It therefore seems to be arbitrary, whimsical and unfair that we have bespoke arrangements for shops, but we have an imposed, one-size-fits-all, top-down blanket arrangement for places of worship.

That is particularly so when we consider that—as we talked about in the context of marriages—the right to manifest one's religious belief is, under the terms of the European Convention on Human Rights, a human right that may be interfered with lawfully only when it is necessary to do so. Why cannot we have the same arrangement for places of worship that we already have for retail? There is no "right to shop".

Michael Russell: As I said, I am happy to ask the scientific advisors to provide you with further information. However, we should keep a sense of proportion in this. Nobody is saying that people cannot manifest their faith—nobody at all. I think that in saying so you go considerably beyond what even the most trenchant critics might say.

A necessary compromise has been reached as the result of a highly dangerous situation. We know, and we have seen in other places, that religious services and ceremonies of various types can lead to an increase in spread of the virus. A proportionate position is therefore being taken, and is being taken after a great deal of thought and study of the situation. We can disagree on that; I fully accept that we disagree, but I do not think that we should say that we are stopping people from manifesting their faith. That is not what is happening.

Adam Tomkins: I have a final question on places of worship, before I move on to gyms. Why has social distancing been maintained at 2m and not reduced to 1m for places of worship?

Michael Russell: There are very special considerations around what would be required in order to reduce the distance, some of which I have gone through in the past few minutes. We also know that 2m is better than 1m. There is no doubt about that. The First Minister was very clear about that when she reported on the special reports that she asked for. Therefore, to keep people as safe as possible, 2m is the right distance.

The process in which we are engaged is far from over. There is—absolutely correctly—a slow process of easing of regulations. Of course, that will not go as quickly as some people would like it to go. I receive representations on a wide

range of issues in my role as a constituency MSP and my role as a minister. There is a slow and gradual easement, which is the safest way to go, at present.

Adam Tomkins: Let me move on to gyms. As with places of worship, I am expressing to you views that have been very forcefully expressed to me by the people whom I seek to represent.

How is allowing pubs, but not gyms, to reopen a coherent response to a public health emergency that has caused untold damage to people's mental and physical wellbeing? We all know how important physical exercise is to mental wellbeing. We all know that not everybody can go for a run in the park; some people need to use facilities that are available only in gyms. Gyms are open south of the border, but they are still closed here. How is it coherent to allow pubs to open, but not gyms?

10:30

Michael Russell: Just as what happens in a church is not what happens in a pub, what happens in a gym is not what happens in a pub. You are comparing very different activities, in very different places, and use of very different equipment.

In the circumstances, the judgment is reached based on what appears from what we know to be the most risky activity. For example, use, then reuse by others, of equipment is likely to be more risky than a person sitting at a table while social distancing from others. Judgments are made on the basis of a very complex jigsaw of activities, in which not just an activity itself, but it and other activities together contribute to the R number and increased risk. It is wrong to equate an activity that is not being done with something else that is being done. They might be very different activities, and they are part of a jigsaw. If we take one piece out, we might be able to put another piece in. How we do that, and how the judgment is reached, are complex.

As I have said, I am very happy that information be provided so that Adam Tomkins can understand the reasoning. You may disagree with it and your constituents may disagree with it; however, it has not been done lightly or ill-advisedly.

Adam Tomkins: I just do not understand. Why can studios and gyms not be marked out with 2m social distancing, if you want, or 1m social distancing if you can go that far, so that we could understand how many people can get in at any one time? We know that gyms have spent significant amounts of their own resources to prepare themselves to open under such circumstances. Why can they not do it, and when will they be able to do it, in Scotland?

Michael Russell: Gyms will be able to do that when the announcement is made that they have been included in the easing of restrictions. A three-weekly review process is under way, so it will happen at the appropriate moment. I am sure that the First Minister will address what can and cannot be done.

Again I note that comparison of two very different things does not help the discussion. What happens in a gym is very different from what happens in a pub. In the circumstances, the judgment by those who have studied the matter very carefully is that risk in gyms is greater, and that they should not be part of the permitted easing, at present. There might be disagreement on that; we can all find and might receive representations about areas on which people disagree with the judgment. It is not entered into lightly; consideration is given and one thing is compared with another.

Adam Tomkins: I think that you can hear the frustration in my voice about the answers, because they do not at all address the core of the question.

My final question is to ask what Scottish Government compensation is being put in place for owners, managers and employees of gyms for the extended lockdown that they are having to endure.

Michael Russell: My colleagues who deal with help to business—Fiona Hyslop, Kate Forbes and, for rural areas, Fergus Ewing—keep those matters under constant review. I have nothing to say today about compensation in any sector.

Adam Tomkins: Plainly, that is not going to be satisfactory to the constituents to whom I am going to have to feed those answers back. We do not have Kate Forbes, Fergus Ewing or Fiona Hyslop in front of us today—we have you, Mr Russell, and I am asking you direct questions to which I would like direct answers.

You are extending the lockdown for gyms in Scotland beyond what applies south of the border, so I want you to tell me—so that I can tell my constituents—what financial package you are putting in place to compensate people who are losing their livelihoods because of decisions that you and your colleagues are taking.

Michael Russell: We are not “extending” any period of lockdown. We have a set of regulations that we are cautiously and sensibly easing. We have made decisions to do that, and we are doing it.

In the circumstances, the arbiter—the sine qua non—is not what happens outside Scotland. It is that decisions that are made in Scotland be for the benefit of the people of Scotland—to keep them

safe, to protect lives, and to move on from the virus. Those are really important considerations.

I feel Adam Tomkins' frustration; I know that many sectors are frustrated. However, the public good is what has guided the Government and the First Minister. It will continue to do so.

I go back to the point that this is not over, and that to behave as though it is does no service to our constituents.

Shona Robison: Good morning, cabinet secretary. You said in your opening remarks that phase 3 might last more than three weeks, and the First Minister has said previously that the focus is on reopening schools. Can you say a bit more about what work the Scottish Government is undertaking to judge whether phase 3 will last more than three weeks? Without pre-empting what the First Minister will say on Thursday, can you say what work is being done to balance reopening of schools with the route map going into phase 4?

Michael Russell: You are right to stress that the reopening of schools is the absolute focus. I will not pre-empt anything that the First Minister will say this week and you would not expect me to do so, but it is essential that we keep in place the situation that will enable schools to reopen from 11 August, as John Swinney outlined in his statement last week. Reopening of schools was always going to be conditional on there being reduced infection rates, confidence in surveillance measures and having a process for handling local outbreaks.

All those things have been worked on intently on a few levels—for example, at national level on handling local outbreaks, and at education level—as you will know, I speak as a former cabinet secretary for education—through work that is being done by the Covid 19 advisory sub-group on education and children's issues.

It is a complex matter; it is not simply about reopening schools. There are also issues to do with school transport and what will be in the curriculum—for example, in terms of physical education, activities such as choir singing and drama, support for pupils who might have to self-isolate and teaching in mixed groups. All those aspects will have to be put in place. That is the priority, so I would expect that over the next few days and into next week, as we move towards 11 August, our focus will be on ensuring that reopening the schools is an achievable end.

That is not just an end in itself, although it is highly desirable that it happen, because it will free up other things, such as parents being able to return to work. Lots of benefits will come from getting right the reopening of schools, primarily for young people, but more widely for the economy and some of the things that Adam Tomkins talked about. We have priorities in the gradual easing of

lockdown restrictions, one of which is to get schools reopened.

Shona Robison: To follow up on that, I point out that the Government talking about the priority and focus being the reopening of schools goes back to some fundamental discussions that we have had in the committee. In easing lockdown restrictions, we cannot ease everything at the same time because that might impact on the R number. That number is low at present, but there is the potential for easing of restrictions to have an impact on it. Is taking the big step of reopening the schools part of the trade-off that we have talked about, in that it might require a delay in easing other restrictions? Is that a reasonable summary of the situation?

Michael Russell: Absolutely. I agree with Shona Robison on that. We can see reopening of schools as a positive sign, given that when we published plans on reopening schools with the blended-learning model, there were about 20,000 people in Scotland who could transmit the infection. There are now many fewer people who could do that. Reopening schools is therefore a sign of progress.

However, once that step is taken, we will have to assess its effects and to be aware of potential downsides and difficulties that we will have to deal with. We are in a complicated situation. It is a truism—I have said this at committee previously, and I know that the committee has also said it—that it is hard to come out of lockdown, and much easier to go into it. How we come out of lockdown is crucial, but the most crucial thing is that we keep the virus suppressed and ensure that we are in a position to work on eliminating it.

That means that we will have to assess the impact of reopening schools. We have a focus on working up to 11 August and then beyond it. I am sure that the further information from the First Minister on Thursday will make it clear that that will be an important moment. We are moving towards reopening schools on 11 August. In some places, there will be a gradual start over a few days, and in other places there will be a much more sudden start. We will then move on from that, and assess the situation.

Colin Beattie: It is evident from conversations that we have had with members of the public that, with the phased reopening, many of them are a little confused about why their particular passion, be it sport or whatever, is not being opened up while others are.

Given the sheer scale of the regulations, it will be quite difficult to police the changes that are being made. We might put in place requirements that relate to people gathering in public places, wearing face masks and so on, but we do not

have a bobby on every corner, so we rely heavily on the public's good sense in obeying those instructions. How will we measure the success of the changes as they come in?

Michael Russell: There is a huge responsibility on us, as elected public representatives, to balance the frustration that certain groups and individuals feel about certain things with our duty as leaders to ensure that we are part of the process of safely taking Scotland out of a very difficult set of circumstances.

Nonetheless, compliance has been remarkable, whole hearted and overwhelming. We could all tell anecdotes of times when things have not been so good but, by and large, compliance has been comprehensive. People recognise that the reopening is taking some time, and that it should do, and they have confidence in the process. Our job is to listen to, and try to understand and get information from, people who are frustrated and angry. Step by step, we need to get people to stay with the process, because it is not over.

We have to put out a serious message that the pandemic is not over, and there is still a lot of work to be done. We are not through it, by any manner of means. We can see the information that is coming from the World Health Organization, which makes clear the global nature of the pandemic. We can see where progress has been made in certain places and then lost, perhaps because there was too early an opening. In all circumstances, we have to take our role very seriously, to articulate to our constituents the needs and requirements and to ensure that we endeavour to lead by example. All those things are really important.

As far as enforcement is concerned, in the end there are penalties. The police have been entirely sensible in ensuring that those are applied at the very end of the road. As we know, there were some weekends in the earlier phases when quite a number of fixed-penalty notices were issued but, by and large, we should endeavour to engage, explain and encourage, and only then should we enforce. That is exactly the right approach, and we should go on with it.

Colin Beattie: We have covered an awful lot of ground through previous questioning, so I will not delay us, but I will make one little plug. Therapy pools, which are required for people's health and wellbeing, are not yet open, and many people are suffering from a lack of access to them. I am pretty sure that some sort of social distancing could be arranged in such pools.

Michael Russell: I am sure that that is noted. The moment that it is safe for something to happen, we will be very keen to make sure that it does.

Alex Rowley: I agree with the cabinet secretary that we need to be cautious—it would be crazy to rest at this stage, after all the sacrifices that have been made.

10:45

However, I want to pick up on a couple of points that Professor Tomkins raised, including his comments on public worship, which I know something about from my own experience. Last weekend, I was in Inverness and went to mass at St Mary's, and this weekend I was at St Joseph's in Keltie. Given the social distancing and other measures that were in place there, one might say that I experienced the Rolls-Royce model, but when I left the chapel and went into shops, it seemed that I was in a completely different environment. There needs to be a consistent approach.

Will the cabinet secretary give a commitment that he will continue to look at that issue, and that there will be on-going discussions with churches to find out about their experience? The current restrictions mean that a lot of people are being denied the opportunity to go to mass, because they have to book ahead. In my opinion, the restrictions in places of worship seem to represent a Rolls-Royce model, but they are not being practised elsewhere.

Michael Russell: I will of course give a commitment to ensure that my colleagues who deal with the day-to-day issues of faith communities are actively continuing to talk with and listen to those communities on such matters. Nothing about the current approach is set in stone, if I may use that phrase in that context, but it is the right decision at present.

Of course dialogue should continue, because nobody wants the current approach to last any longer than it has to. We should be absolutely clear that it is not being undertaken for any reason other than that we believe that it is the right thing to do to suppress and eliminate the virus. I am happy to make the commitment to continue the dialogue; I will ask my officials—and Aileen Campbell, who I think has been involved in the dialogue—to ensure that they do so.

Alex Rowley: Thank you. That is important because, as you said, we need people's compliance in what we are doing, which means bringing them on board. I give all credit to the Scottish Government for the way that it has communicated and taken people with it; the United Kingdom Government could learn a lot from that approach.

However, people need to have confidence in what is happening, and they are raising issues with the restrictions on places of worship in the

same way as they are with gyms. If I spent most nights in the pub, even aside from the fact that I would not feel well by the end of the week, it would not be as good for me as going to the gym, and yet there are fewer restrictions on pubs. That is why people are asking these questions.

I am sure that you will agree that we need to ensure that people have confidence that what the Government is saying is correct. I think that the confidence is there—I do not doubt that for a second—but it is important that we look again at churches, as we should look again at gyms. Other than that, I will say only that the difference between the Scottish Government's approach to communication and that of the UK Government has been stark.

My point to you is not a criticism; I am simply saying that people are asking these questions—we are getting letters about gyms, for example. Can you address that?

Michael Russell: I absolutely accept that point. There is no intention to penalise one sector or another. There has to be coherence—I accept the word that Adam Tomkins used—and consistency, but there must also be recognition that we are taking this approach to ease our way forward as carefully as we possibly can in order, as you pointed out, not to throw away the astonishing progress that we have made.

Ross Greer (West Scotland) (Green): I will continue the line of questioning begun by Adam Tomkins and Alex Rowley. I refer members to my entry in the register of interests—I fulfil a range of roles for the Church of Scotland, although I am not currently a trustee of any congregation.

Can you explain why I am able to go to my church with 49 other people for a Sunday service, but if I were to go to a funeral on a Monday, there could be only 20 people in the same room?

Michael Russell: I am happy to provide the committee with further information on the justification for that recommendation.

I know, as I am sure that Mr Greer does, that there is an inevitable degree of emotion at funerals. That may lead to a breakdown of social distancing, as we have seen in a few regrettable instances. The limit on numbers, which has been difficult for people to accept, is necessary at this stage, and it is supported on public health grounds. I do not diminish the undoubted effects of that limit, and I do not disagree with Ross Greer; I think that it is difficult to live with. However, in the view of those who recommended the measure, it is necessary.

Ross Greer: I appreciate that—I, like my colleagues, am not disagreeing with the limit. I am simply trying to understand why the current

guidance is as it is. If the Government published its advice, I might find that I did disagree with it, but at present I cannot make such a judgment, as there is no information out there. If you are committing to supply the committee with further information and the advice that led to those decisions being taken, I am sure that we would take that into consideration.

I am sure that your inbox is full of the same stuff as ours. Members of the public are struggling to understand. We all knew that, as the lockdown was eased, the regulations would become more complex and inconsistent—in some cases, unavoidably so. However, it is understandable, especially with something as personal and important as a funeral, that someone would struggle to understand why they could have only a fraction of the number of people who had been in the building the day before. If you are able to supply that information to the committee, I would be grateful.

Michael Russell: I note the committee's concern and its requests for further information on some of the decisions that have been reached to get us to the situation that currently exists. It is entirely fair that the committee wishes to have that information. I will do my best to see what information we can provide, and I will try to provide as much as possible.

Ross Greer: That is all from me, convener—if we get further written correspondence, that would be appreciated.

Graham Simpson (Central Scotland) (Con): I am not a member of the committee, but I will say that I have no relevant interests to declare.

I want to go back to face coverings. Whatever someone thinks about mandating their use, doing so impinges upon people's civil liberties. Cabinet secretary, can you explain why you pushed the law through without any prior parliamentary scrutiny? We are scrutinising it only now, after the event.

Michael Russell: You will know, as a former member of the Delegated Powers and Law Reform Committee, that the procedure that we are following is an unusual one, but it is a procedure that allows scrutiny. This meeting is the scrutiny, and the regulations will be put to Parliament later this week, as you know.

That is how we have dealt with the regulations. We have put regulations in place speedily because we felt that that had to be done speedily: these are health issues. The last time that I was at the committee was for its last meeting before the recess, when I made it clear that I was available to discuss these matters. You have the opportunity to do so now. I do not accept the thesis that it has been done by some sleight of hand. It is being

done by the process by which we have dealt with all issues of regulation.

Graham Simpson: I did not say that it was being done by sleight of hand. I did not use that phrase.

Why, in the regulations, do you say that people do not have to wear face coverings in banks and building societies?

Michael Russell: I can only assume that that is because there will be existing barriers in place in those places. I would want to get more information on the thinking behind that detail and provide that to you. I can see no difficulty in doing so.

Graham Simpson: Are you saying that you do not know? The regulations are in your name.

Michael Russell: I recognise that. I will provide you with the most accurate answer that I can.

Graham Simpson: Does that exemption also apply to post offices?

Michael Russell: With the greatest respect, if you have a list, I am happy to answer your questions. The regulations are such that they will have issues within them—I want to provide you with answers, and I am happy to do so.

Graham Simpson: I am trying to understand what the regulations mean; I think that that is what you are here to explain. The regulations are in your name. If someone goes into a bank or building society or anywhere that operates a currency exchange office, they do not have to wear a face covering. I am assuming that that possibly includes post offices. Would you make the same assumption?

Michael Russell: I am not going to make any assumption. I always think that the best thing to do if I am trying to be as helpful as I can to a member is to provide a comprehensive answer to any questions that you have. I would be delighted to answer your questions. If you wish to submit them in writing today, I will get you an answer as quickly as I can.

Graham Simpson: Well, okay—I was hoping that you might be able to answer that while you are here, but we will move on if you cannot. For when you do come to answer my questions, I should point out that the authorities in England have said that people have to wear face coverings in banks, building societies and so on. There is a difference there; I do not know why.

Michael Russell: That is helpful information and I will make sure that we look at that.

Graham Simpson: There seems to have been a change of heart or a change of opinion from experts on this matter. Your own Professor Jason Leitch started by saying in April:

“The global evidence is masks in the general population don’t work.”

He went on to say:

“This virus is not airborne—it has to be spread by droplets—hence the social distancing ... If this were in the air then the instructions would be very different, but it’s not—so masks in the general population are not helpful.”

The World Health Organization has rather flip-flopped on the whole issue as well. Jonathan Van-Tam, the deputy chief medical officer in England, said:

“there is no evidence that the general wearing of face masks by the public who are well affects the spread of the disease”.

Those were quite emphatic statements from experts. What has changed?

Michael Russell: The First Minister has addressed those issues several times. As the pandemic has gone on, information has changed and the state of scientific knowledge has changed. For example, two weeks ago, I think it was, the WHO was indicating that there was a possibility of airborne transmission, which is a very serious issue.

There is also a view that there is some evidence—which has been published in South Korea among other places, if I remember correctly, and certainly in Japan—that the wearing of masks appears to reduce transmission.

I do not think that there are absolutes here, but I think that the balance of advantage has moved in favour of wearing face masks, as has public opinion, which is shown by the compliance with the regulations that we have observed since wearing a face mask became compulsory—although a small group of people are very upset by it. The UK Government has followed suit and has put in place similar regulations. I think that that is helpful.

My view is that lots of things have developed and changed during the period, and we must all be prepared to say that things do change.

11:00

Graham Simpson: You mention the UK—we are talking about England, whereas the situation in Wales is much different. The mandatory wearing of face masks has not been introduced there. Your good friend Mark Drakeford seems to take an entirely different position from yours. I would not say that he is relaxed about it—he is not relaxed—but he is saying to people that, if a place is crowded, wearing one is advised, and if a place is not crowded, people should use their judgment. Did you never consider taking Mr Drakeford’s stance?

Michael Russell: Mark and I are good friends, as you know. He is entitled to his view. The view in Scotland, informed by the advice that the First Minister has received, has been different. We are able to have different views—we are right to do so, and we have done so.

Graham Simpson: Have you done any assessment of the risk to the wearers of face coverings? I know myself that there is a temptation to touch your face when you are wearing one, whereas you were not doing that before. I can therefore see how there could be a risk.

Michael Russell: A variety of risks have been claimed in relation to wearing face masks, one of which was lack of oxygen in the bloodstream. Although none of them appears to have been well founded, there may of course be people who will want to argue that case. I do not think that it is a case that many of us would accept.

Graham Simpson: I was not making that particular case. It is merely a fact that people are touching their faces. They will touch surfaces in shops and then go and play about with their face covering.

I will ask my final question. What will it take and what needs to happen to end the requirement to wear face masks in shops?

Michael Russell: That is a question that can be answered only when we see the progress that we make with the virus. If there were a vaccine, circumstances would change very greatly. As has been the case throughout this whole process, it is a question of seeing, step by step, how things improve and whether we believe that the balance of risks has changed. All I can say is that, at the present moment, the regulation remains in place.

The Convener: Stewart Stevenson wants to come back in with a supplementary question.

Stewart Stevenson: I am trying very hard not to be really outraged by the line of questioning from my colleague who is a former member of the Delegated Powers and Law Reform Committee. I speak as someone over the age of 70 and as someone who has to regularly measure his lung capacity—the measuring instrument is sitting here next to me on my desk.

I go back to the third meeting of this committee, when Harry Burns gave evidence. Let me quote from the *Official Report*:

“If neither of them is wearing a mask and they talk for five minutes, the person who is negative has a 90 per cent chance of getting Covid; if the person who is positive is wearing a mask, the person who is negative has only a 10 per cent chance of becoming positive.” —[*Official Report, COVID-19 Committee, 7 May 2020; c 5.*]

This committee has heard evidence from the person who used to be senior medical advisor to

the Government and a man whom I utterly respect: Professor Sir Harry Burns.

However, let me go further than that. The evidence that we just heard suggested that people who are well do not need to wear face masks, because they will not infect others. The trouble is that 60 per cent of the people who are capable of passing on this deadly virus do not know that they carry the virus with them. I suspect that, for the rest of my life, I shall wish to wear a face mask to protect others from the risk that I might infect them. That is standard practice in many countries in the far east and has been for many years.

Let me also nail one other thing that was not said, but that is implicit in some people’s comments: namely, that it is difficult for asthmatics to wear masks. That is utterly wrong, because asthma makes it difficult for you to breathe out. It is a fallacy among non-asthmatics that asthma makes it difficult to breathe in. A mask does not inhibit your breathing out at all.

The committee should be careful to return to the evidence of Harry Burns and to the huge benefits that there are to wearing masks. I invite my colleague who was on the DPLR Committee who has just been asking questions to take away the contribution that I have just made and think hard about it. Masks save lives and they cost little in terms of personal restriction or economic effect.

Thank you very much, convener. I realise that that was not so much a comment as a peroration, but I feel incredibly strongly about masks, and I have good reason to do so.

The Convener: Thank you, Stewart. We are not here to have a debate about the issues or the merits or otherwise of the points that we have heard; we are here to ask questions of the cabinet secretary. You have made your point. I do not know whether the cabinet secretary would like to respond to what has just been said.

Michael Russell: I do not, because I think that Stewart Stevenson put it exceptionally well.

The Convener: I am sure that Mr Simpson is shaking his head, but we are not here to have a debate on those issues. When the Parliament reconvenes, I am sure that there will be ample opportunity to discuss and debate different viewpoints.

Members have no more questions. I thank the cabinet secretary for his evidence, and I thank all members for their questions and contributions. We will consider the motions to approve the regulations in the week beginning 17 August, once the DPLR Committee has considered them.

Meeting closed at 11:05.

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