



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Wednesday 16 September 2020

Session 5



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COVID-19 COMMITTEE **16th Meeting 2020, Session 5**

CONVENER

*Donald Cameron (Highlands and Islands) (Con)

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Maurice Corry (West Scotland) (Con)

*Annabelle Ewing (Cowdenbeath) (SNP)

Ross Greer (West Scotland) (Green)

*Shona Robison (Dundee City East) (SNP)

Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Amanda Gordon (Scottish Government)

Alison Johnstone (Lothian) (Green) (Committee Substitute)

Luke McBratney (Scottish Government)

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

Graham Simpson (Central Scotland) (Con)

Sandra White (Glasgow Kelvin) (SNP) (Committee Substitute)

Pamela Wilkinson (Scottish Government)

CLERK TO THE COMMITTEE

Sigrid Robinson

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Wednesday 16 September 2020

[The Convener opened the meeting at 09:30]

The Convener (Donald Cameron): Good morning, and welcome to the 16th meeting of the COVID-19 Committee. We have received apologies from Ross Greer MSP, Stewart Stevenson MSP and Beatrice Wishart MSP, who are attending other parliamentary committee meetings. I welcome Alison Johnstone MSP, who is a substitute for Ross Greer, and Sandra White MSP, who is a substitute for Stewart Stevenson. Graham Simpson MSP, who has an interest in the matters that we are considering today, has also joined us. I welcome him to the meeting.

I thought that it would be helpful, before we turn to the first item on the agenda, to provide an overview of the agenda for the meeting. We will hold two separate evidence sessions with the Cabinet Secretary for the Constitution, Europe and External Affairs. Under agenda item 1, we will take evidence on two Scottish statutory instruments that relate to the Scottish Government's intention to extend some of its emergency powers under the Coronavirus (Scotland) Acts to March 2021 and to expire other powers in the legislation early. We will have around 45 minutes for that evidence session before we formally consider each SSI under agenda items 2 and 3 respectively.

The second evidence session will take place under agenda item 4. We will consider two made affirmative instruments that were laid under the Scottish Government's emergency powers. Again, we will have around 45 minutes for that evidence session.

I highlight that there has been a small change to the latter part of the agenda. We were originally scheduled to consider the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 13) Regulations 2020, but those regulations have now been revoked and replaced by the consolidated set of regulations that came into force on Monday. Those regulations—the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020—will be considered at a future meeting.

We will consider the motions on the remaining two made affirmative instruments under agenda item 5 before we consider negative instruments under agenda item 6.

Subordinate Legislation

Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 [Draft]

Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 (SSI 2020/249)

09:32

The Convener: Under agenda item 1, as I said, we will take evidence from the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell MSP, on two instruments: the draft Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 and the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020. The cabinet secretary is accompanied by Pamela Wilkinson, who is an official in the coronavirus legislation co-ordination reporting team in the Scottish Government. I welcome both of you to the meeting and invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Thank you. I will divide what I am going to say into two parts, in the light of the agenda. I will deal first with the draft Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020, which we call the extension regulations, and the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020, which we call the expiry regulations.

I think that this is my 10th visit to the committee, and it is clear that I will be back to talk about the consolidated regulations at some stage. I am glad to have the opportunity to speak to the regulations that have been mentioned, which are significant because, as the convener has indicated, they will roll forward the regulations for six months.

The Coronavirus (Scotland) Acts were introduced in March and May 2020, respectively, to provide new powers and measures to protect the public, maintain essential public services and support the economy during the current outbreak of the coronavirus. Scotland has made major progress in tackling the coronavirus since that time, but I think that everybody knows that there remains a very real risk of a resurgence of the virus, and the impacts—*[Inaudible.]*—require further action to be taken.

After consideration, the Scottish ministers have therefore taken the decision that both acts should be extended from 30 September 2020 to 31 March 2021, subject to the agreement of the Parliament, in order to ensure that they remain available to

support the response to an unprecedented and on-going public health and economic challenge. In taking the decision to seek to extend both acts, we have given very careful consideration to the requirement to balance the needs of many stakeholders and partners who wish to see the powers remain available against the commitment that was given when the acts were introduced that the provisions would not remain in place unless that was necessary.

I believe that the approach that we have taken is proportionate and appropriate to the scale of the on-going risks posed by the coronavirus. We have also lodged a separate set of regulations that will expire provisions that are not needed beyond 30 September, reflecting the commitment that was given when the legislation was introduced that the powers should not be in place for longer than they are needed.

I hope that that is a useful introduction to what we are going to discuss.

The Convener: Thank you, cabinet secretary. We now turn to questions, and I will ask the first. Extending emergency legislation is a significant step in relation to individual liberty and is not to be done lightly. The committee has received many powerful written submissions from children's charities and organisations in relation to children's rights and the impact that the legislation's extension will have on children. That being so, why does the cabinet secretary think that the extension is justified?

Michael Russell: It is a difficult set of decisions to make. We have approached the issue as we have approached the two-monthly reporting on the acts, as you will be aware, taking seriously the human rights point of view and the children's rights point of view. The restrictions exist because of the public health difficulties and the emergency that we still face. Of course, in the end, it is a matter of judgment. What I am saying to you is that the Scottish Government's judgment, based on what we know about the virus and what we have seen not just in Scotland and the UK but globally, is that we require these regulations to continue because the threat remains very present.

The virus is still very dangerous and is killing people globally—and, as we know, it is spreading again in Scotland. We will do anything that we can to prevent it spreading in an uncontrollable way. We look back to what took place in March and recognise that the actions that we took, which were very difficult, were actions that succeeded. However, we do not want to have to go back to that level of action if we can possibly avoid it.

We will, no doubt, have this discussion several times during this meeting, but it is a matter of balancing risk and the judgment that we have

come to is that the balance of risk means that we should extend the regulations where we need to. Nevertheless, there are some items in the regulations that we are not extending, which is right.

The Convener: Thank you for that answer. Let us move on to the issue of public consent. We heard some quite stark evidence last week from Professor Linda Bauld around her concern about "potential unrest" in the context of a "declining gradient" of public support for Government actions not only in Scotland but across the UK. Having taken the decision to extend the legislation, do you accept that there is a risk that public support for Government actions might diminish in the months ahead?

Michael Russell: I accept that Linda Bauld is right to be concerned about that and that we, as politicians, have an obligation to be clear about why we believe action should be taken. However, I meet a large number of people throughout the country and, although I know that there are people who are bitterly opposed to the regulations, I know that many people recognise that we have to take the actions that we are taking in order to keep the public safe. That is the balance of risk, and that is at the core of what we are doing.

The police have operated exceptionally well in these matters. There have been those who wish to go out and demonstrate, which is their right, but there are also those who have gone out and demonstrated and then recognised that that is highly dangerous, that the situation that they are in is highly dangerous and that it is best to keep to the regulations. Nobody likes or wants this situation. Every single one of us on this committee—an assembly that I count myself part of—wants the situation to come to an end. However, it will not come to an end by simply wishing it; it will come to an end when we have taken the actions that we need to take collectively. I think that the vast majority of people in Scotland recognise that.

Of course, there will be political differences on the matter. We will hear in this committee from people who disagree with the actions that are being taken. I hope that we will be respectful and set an example to the people of Scotland of how we can debate and discuss these issues. However, the on-going benefit of the regulations is clear to me, and we must move ahead in that way.

The Convener: Thank you for that answer. We will move on to colleagues' questions. As ever, I respectfully ask colleagues to pause for a few seconds before asking their questions.

Monica Lennon (Central Scotland) (Lab): Good morning. Cabinet secretary, my question is about adults with incapacity. In relation to the stop-

the-clock guardianship orders—which are to be extended but suspended—could you say more about the threshold that would trigger those provisions? In answer to me last week, the Law Society of Scotland drew attention to some confusion among health professionals about what would trigger the use of the powers. Could you respond to that?

Michael Russell: Monica Lennon is correct in saying that the stop-the-clock provisions are being suspended; we will both be glad of that, because it is important that that takes place. I ask Pamela Wilkinson to give more detail on that issue, because it is important and we want to think it through carefully. We have talked about those provisions on every occasion, and we have also talked about reporting. It is right to do so, because the provisions are sensitive and there are justifiable concerns about their existence within the bill and whether certain actions might now allow them to be reinterpreted.

Pamela Wilkinson (Scottish Government): The main provisions that are being covered relate to guardianship orders and the section 47 certificates under the Coronavirus (Scotland) Act 2020. As the deputy convener and cabinet secretary mentioned, the provisions are being proposed for suspension. Should the provisions be required again at a future point, they would need to be instigated through regulations.

With regard to the thresholds that are in place for considering whether those measures should be used, I suggest that I write to the committee with more detail on that; I will consult the Scottish Government officials who collate that information. We also include information on the operation of those provisions in our two-monthly reporting to Parliament. In the third report, which is due after 30 September, we undertake to include information on the operation of provisions up to the point of their being suspended.

Michael Russell: The renewing or bringing back into force of any provision in those circumstances would have to recognise the original reason for the provisions. The original reason for those provisions was the fear, which Monica Lennon recognises, that it could not be business as usual, because there was not the capacity to operate the system as it normally operates. As Pamela Wilkinson rightly said, for the provisions to come back, a regulation would be required. We would need clear evidence that the system was not able to cope, and that is not the present situation. The Scottish courts are dealing with guardianship applications entirely in the way that they are used to doing so, and the office of the public guardian now has more staff available. In my view, that situation would have to change; if

it changed, we would come back, but I profoundly hope that we will not have to do so.

Monica Lennon: I thank the cabinet secretary and Pamela Wilkinson for their comments and that commitment to provide more written information.

I am looking at a written response that the committee received yesterday from the Scottish Human Rights Commission, following its oral evidence to the committee last week. It relates to how the emergency provisions interact with other provisions and pieces of legislation. The commission confirmed in writing to the committee that it shares

“the concerns of the Centre for Mental Health and Capacity Law at Edinburgh Napier University that during the crisis, adults with incapacity may have been moved to alternative settings without due legal process, with the potential for deprivations of liberty and inappropriate restrictions on autonomy.”

The commission echoes the centre’s call

“for the independent monitoring or review of discharges to ensure that rights are upheld.”

In its written submission, the Law Society of Scotland also referred to that matter.

Have those calls for independent monitoring and review in relation to discharges been heard? What more can the cabinet secretary say to reassure the committee and the stakeholders who have been in touch about this issue?

09:45

Michael Russell: I respond to that in two ways. First, human rights have not been suspended. We want the rights of individuals to be fully and completely respected during the process. If there is any evidence that that is not happening, there are legal remedies.

Secondly, if the Scottish Human Rights Commission and the Law Society wish to specifically refer to this taking place and to seek independent review, I would recommend that to the appropriate minister. In a sense, I am a catch-all minister for these events and I talk about the generality of it. It is very important that the Minister for Mental Health and the health secretary are engaged in the process, and I am sure that they would be.

I therefore recommend that, if there is evidence of abuse of any description, it should be investigated, and if there is the need for a wider look at it, that will be considered sympathetically by the relevant ministers.

Monica Lennon: The Law Society’s submission says:

“Without access to robust data, we cannot substantiate these concerns”.

It therefore looks as though there is a feeling that there is not enough data available and that we need to build confidence in the process. I would appreciate it if the cabinet secretary could take that back to the relevant ministers.

Michael Russell: Evidence is always important, and I would want to see it.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning to the cabinet secretary, who has described himself today as a “catch-all minister”.

My question goes back to the important issue of buy-in. When Professor Linda Bauld was at the committee last week, she said:

“We need to take a nuanced approach to communicating to different groups in order to maintain support.”—[*Official Report, COVID-19 Committee*, 9 September 2020; c 8.]

Will the cabinet secretary comment on that? Assuming that he agrees with that, will he indicate how the Scottish Government is planning to do that very thing?

Michael Russell: The response has been nuanced from the very beginning—I agree with Linda Bauld. I might have described myself as a catch-all minister, but we do not want to take a catch-all approach; we want to focus on individual groups.

There has been some unfortunate publicity about young people’s inability to stick to the regulations. That has not been a helpful, nuanced response. We have to recognise that young people have found this very difficult—perhaps more difficult than other sections of society have found it. How can we help them and persuade them that this is all necessary?

Each of us, as constituency MSPs, will have seen particular cases of people to whom our hearts go out. I was approached this very morning by somebody who cannot see their mother in a care home as they wish to. We have to do two things. First, we have to persuade people who have individual problems of the reasons why the restrictions still exist and that the possibility of transmission of the virus back into nursing homes, for example, would be a very bad thing to happen, which is why we need to be careful with our visiting. We need to persuade people—as I know the First Minister has done by means of her daily briefings—to go into the detail of why certain regulations are in place.

Secondly, we must persuade the people who are involved in actions that are not helpful—the Aberdeen case was an example—why their behaviour needs to change if we are to limit transmission. Just as we have done in Lanarkshire and Glasgow, where the scientific evidence on the means of transmission is different, we have to be clear to people about why the problem is occurring

in households and not necessarily in licensed premises. We also need to do that in a variety of ways. I took part in the phone calls on Friday evening with MSPs and MPs from Lanarkshire, who were given an early opportunity to know what was happening and to ask questions. Public messaging is important, but so is example, which means politicians and others explaining the position and expressing their own fears and reservations.

We are all human beings. Therefore, nuanced is right, careful is right, and honest and straightforward is right.

Annabelle Ewing: I entirely agree with the cabinet secretary’s comments on young people. On Monday, I listened to an interesting discussion involving young people on the “Call Kaye” radio programme. The point was repeatedly made that they want to do their best and participate as citizens in our efforts to tackle the virus.

The cabinet secretary referred to daily briefings. Last week, Professor Bauld also said that she thought that they were “a helpful tool”. Does the cabinet secretary agree that television broadcasting ensures that the briefings have a wider reach, including to many people in my Cowdenbeath constituency who are not internet savvy and would not necessarily sit and watch something on a computer device but would turn on the TV?

Michael Russell: Yes. Many people, including independent experts, have observed that the television briefings have been very helpful. They have also put the Scottish Government under considerable scrutiny. The First Minister has been answering between 10 and 20 media questions on almost any issue on a daily basis. How anybody could say that that is escaping scrutiny just baffles me.

The briefings are being broadcast this week, and I hope that they will continue to be broadcast. I know that many people who are not politically sympathetic to me, Annabelle Ewing or anybody else with our views, have found them helpful and reassuring. It would be sensible to continue the broadcasts, and I am pleased that people such as Professor Bauld have recognised their importance. Of course, they have to be treated responsibly, as they have been.

Annabelle Ewing: I hope that the briefings will continue to be broadcast by whomever, because I think that they make a fundamental difference. If we are talking about buy-in and the need for people to understand the messaging, it is entirely irresponsible to withdraw the opportunity for people to do that.

Maurice Corry (West Scotland) (Con): I will ask about the message that is coming out for

disabled people, and I refer to Monica Lennon's earlier question.

Sheriffs might be under considerable pressure as a result of the extension of the provisions that relate to a person who is being looked after as the subject of a guardianship order. Any change in that person's condition or situation could adversely affect sheriffs' decisions, so sheriffs need to have the maximum amount of information relating to the person in question. Are there restrictions in that regard that might tie sheriffs' hands, because they cannot look more widely at the subject? Will the cabinet secretary comment on that issue?

Michael Russell: I would hope that that was not the case. Given that the stop-the-clock provisions have been suspended, I would hope, as we have been told, and as I have indicated, that we are going back to what we would call normal—although nothing is normal—and that all the circumstances would be taken into account.

There is no halfway house between what was in the provisions and normal activity—there is no gradation there. The Office of the Public Guardian has been clear on what is available, and it is clear that the intention is to have the process operating properly. If it is not operating properly, that would be a statutory offence and against the rules that exist. I do not think that sheriffs ever willingly allow their hands to be tied, and I am sure that they would not do so in those circumstances. That would be the normality of the situation. If there is any evidence of it happening, that should be drawn to the attention of the relevant authority as quickly as possible.

Maurice Corry: You are quite happy that the way in which things will proceed is sufficient to cover most—I cannot say all—eventualities.

Michael Russell: I hope that it is. We are going from concerns about the effects of the emergency legislation to concerns about how the system operates, which is a different question. It is a legitimate question that should be addressed. As the regulations cease to have effect, the committees of the Parliament that deal with the relevant subjects might wish to consider whether things have gone back to the way they should be. That is an entirely legitimate question for committees of the Parliament to ask, but it is not directly related to the regulations themselves. We have, in a sense, taken that away. It is important that the system operates as it should operate, and I think that all of us want that to happen.

As Maurice Corry and I recognise, a number of things were legislated on that were very difficult indeed. We want to ensure that the difficulty ends in a way that restores the full rights of individuals. That is our intention.

Shona Robison (Dundee City East) (SNP):

Good morning. You mentioned being contacted by constituents who have an elderly relative in a home about their frustrations with the restrictions on visiting. Many of us have had similar representations. Families are comparing the current restrictions in care homes, although they vary from home to home, with the rules on visiting elderly relatives in hospital, which are, of course, quite different. The issue relates, in part, to the point about communication that you made earlier. Is the Government actively looking at the comparison between the two? Could more be done in relation to visiting in care homes? Are you looking specifically at the communication to families on such issues? As you know, the situation is deeply upsetting, and genuine concerns are being raised about the quality of life of those in care homes.

Michael Russell: My colleague Jeane Freeman keeps the issue under constant review and scrutiny. You make an important point about ensuring that there is an understandable consistency between visits to care homes and visits to hospital, and ensuring that, if there is an inconsistency, it is understandable and justifiable. I agree that the issue needs to be raised again with the cabinet secretary, and I hope that she will address it and perhaps come back to you with details of how the situation has arisen.

Care homes are run in different ways. Issues relating to infection control are common to both care homes and hospitals, but there are differences. The best thing is for Jeane Freeman to look at the issue again in the light of what you have said and to come back to the committee about it. As far as is humanly possible and commensurate with the risk that we believe exists, we will try to ensure that there is maximum flexibility. There is a wider issue about mental health and wellbeing, which is very important, and we do not want to stand in the way of that at all.

They are not the same, but there are similar issues in relation to funerals and weddings. Nobody wants to be in a position of saying to people that they cannot do something, particularly in times when people feel very vulnerable and upset. However, there is the wider issue of having to get through the pandemic with the maximum ability to suppress the virus and stop it spreading. As I indicated to the convener at the beginning of the meeting, that involves a balance of risk.

10:00

Shona Robison: I appreciate that. These issues are not easy and that balance of risk is a difficult one.

I want to raise a separate issue, which is in the evidence that was provided to the committee by the Scottish Federation of Housing Associations. Like Citizens Advice Scotland, the SFHA welcomes efforts to support tenants who have rent arrears and recognises the difficulties in making sure that tenants who are struggling to pay their rent are supported. The issue concerns the eviction notice period for cases involving serious antisocial and criminal behaviour, which the SFHA specifically asks to revert to one month from three months.

Such cases may have been raised with you, as they have been with many other MSPs. We are talking very much about extreme antisocial behaviour. Is the Government looking at that? The situation can clearly be extremely challenging for tenants who are living around someone who is exhibiting extreme antisocial behaviour with no end in sight, particularly because people are at home more at the moment. Is that being kept under review?

Michael Russell: All of us are likely to have heard from housing associations in our areas that are very supportive of tenants and want to make sure that nobody suffers as a result of the hardship that the coronavirus has brought, including an inability to pay rent. However, they are also aware that there are people—very small numbers, no doubt—who will take advantage and exploit any situation.

As MSPs, we all know of the horrific results of antisocial behaviour by neighbours from hell. We have seen that in our constituency case load. We are aware of that and keen to ensure that people can still be removed in circumstances in which they are creating mayhem and great upset. However, it is difficult—in fact, it is impossible—to alter the terms of emergency legislation in any significant way. It is either renewed or not and that is the nature of where we are.

Kevin Stewart brought forward some new housing proposals at the beginning of September, which also assisted on some of the points that the SFHA addressed. I know that he will keep under review the ability to deal with antisocial tenants, as well as the ability of the housing associations to operate, because they have had restrictions on that. They have had difficulties because they have been trying, rightly, to ensure that people work from home.

Housing associations have faced lots of difficulties and they have adapted well and worked hard. We want to keep listening to them and to protect tenants—making sure that the tenants' hardship fund works well, for example—but we cannot allow people to make other people's lives an absolute misery. That issue has to be dealt with.

The Convener: I ask Alison Johnstone to declare any relevant interests before asking her question.

Alison Johnstone (Lothian) (Green): I have no relevant interests to declare. Actually, I should say that I am the deputy convener of the cross-party group on animal welfare, because that may have relevance to my question.

The cabinet secretary will no doubt be aware of public concern about the exemption of grouse shooting from the Covid restrictions in England. That means that, if somebody is walking in the hills, for example, they are bound by the rule of six, but if they are out shooting grouse, they can be in a group of up to 30. Will that activity be exempted from the rule of six in Scotland?

Michael Russell: Let me give you some good news. There is no specific exemption for grouse shooting or any other shooting or hunting of any description. The rules in Scotland are slightly differently and people are able, for example, to go into the hills or the countryside in slightly larger groups.

Let me be specific. Under the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations 2020, which are the new regulations that the convener referred to, there is a paragraph that I will read to you:

“For the purposes of paragraph 8(1)(b)(v) and (vi)—

under which organised activity or exercise is allowed—

“an activity or exercise is ‘organised’ if it is organised by—

- (a) a person who is responsible for carrying on a business or providing a service,
- (b) a person who is responsible for a place of worship,
- (c) a charity or other not for profit organisation,
- (d) a club or political organisation, or
- (e) the governing body of a sport or other activity.”

People in larger groups can take part in organised hiking, angling, golf and a variety of other activities, provided that social distancing measures are followed. Any legal activity, including shooting, is covered by that. Shooting would need to be made an illegal activity in order for it to stop. There are no specific exemptions to the rule of six people gathering. We wanted to make sure that people could go fishing and walking in the countryside in organised groups—and they can. However, organised exemptions such as those that are being applied south of the border will not be implemented.

Alison Johnstone: So, people could not get together with a group of seven or eight friends at the weekend and head up into the hills, but 60 people with the means to go out grouse shooting

together could do that, as long as it is part of an organised activity. The cabinet secretary kicked off his opening remarks by referring to the need for balance—we are continually weighing up balance and risk and public health is our utmost priority—and Annabelle Ewing rightly referred to the need for public buy-in. However, when we receive correspondence from constituents who are very upset that they have been unable to gather in the numbers in which they would wish to mark extremely important occasions because they are not organised activities, but organised activities that can hardly be called essential continue to take place, I am sure that you will understand that that is very difficult for us to explain.

A child who does not have a private garden could be celebrating their birthday on their own because their parents do not have the means to pay for a birthday party organiser. I am concerned. Frankly, it is difficult for people to understand the logic behind some of these regulations.

Michael Russell: No specific exemption for shooting exists in Scotland. However, the regulations allow for a church group, for example, to go and walk in the hills. If we were to say that that could not happen, we would be attacked in another distinct way.

I agree with the member that exemptions for shooting are not right but, equally, you cannot legislate solely on the basis of dislike; you have to legislate in a fair and equitable way. As I have pointed out, if people can walk in organised groups and play golf—and I know many people who have taken advantage of that—or if people want to go out as a club together, they can do so in a regulated way. We cannot stop them and, indeed, we are being encouraged to allow them to do that. However, there is no organised exemption in Scotland for shooting, nor will there be. I am happy to confirm that.

Alison Johnstone: Action for Children has raised its concern that children who cannot afford to take part in organised, paid-for activities such as sports clubs or dance classes can mix at school but cannot play in the park with their friends or kick a football about. That is a serious concern. Is the cabinet secretary aware of his Government's intention to look again at the fact that 60 people heading into the hills to take part in shooting or other organised activities is being seen as less risky than children playing in their gardens?

Michael Russell: It is not less risky than children playing in their gardens, but there is a need to ensure that communities can organise activities. Communities can organise to help children and other groups of people. I believe that every child should have the opportunity to celebrate their birthday and I am sure that everybody would try to ensure that. However, I do

not think that there is a direct equivalence between that and the organised activities that you indicated. If you make that direct equivalence, you are doing a disservice to the many people who want to ensure that children are treated equitably and well and given the opportunities that they should have.

Nobody doubts for a moment the difficulties for people, particularly the least advantaged and children in inner cities. Every piece of work that can be done for them should be done. I am happy to ensure that my colleagues come to you with indications of the work that is being done. However, there is no organised exemption in Scotland for shooting. People have the ability to go into the countryside, but, if we were to try to ban that altogether, I am pretty certain that you would be one of the first people who would wish to criticise that—and I would agree with you.

Alison Johnstone: I whole-heartedly support every measure that we can take to help people get outside to enjoy nature and the outdoors. I am just concerned about there being limits on individuals and about the fact that organised activity that is often economic seems to be the trigger that makes that possible.

Michael Russell: I would welcome any constructive suggestion as to how we square that circle, given the need to ensure that we do not have an uncontrollable outbreak of the virus. Were you to make any suggestions, you can take it that I would ensure that they would be looked at seriously by my colleagues.

Alison Johnstone: Thank you.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, cabinet secretary. I have a question for you from some constituents about the two-household restriction. Three elderly people who live separately and alone have asked me why we consider, on the balance of risk, that it is more dangerous for them to meet for a coffee, for example, than for larger groups in two households to come together or for even larger groups to be together on a bus or a train or in a restaurant or cafe. They feel that it is particularly difficult to understand that. I would be obliged if you could help explain that for us, please.

Michael Russell: I will do my best. In a sense, it is a matter of simple arithmetic. The risk increases as more households come together, because there is no control on those households. It is a long time since I did mathematics or arithmetic of any description, but I suppose that it is about a geometric progression. One household will have a limited number of connections, all of which might give a limited number of activities that would create the possibility of someone contracting the virus because, for example, they were outside

among workmates or whoever. That risk would perhaps double if two households come together, because they will have been in different places, and it would perhaps triple if three households come together.

The reality is that it is not just about individual household numbers, although that is a factor, but about the number of connections from more than one household. Nobody is happy with the restriction. We have reduced the permitted number of people who can meet because of the evidence that we have seen both north and south of the border that the biggest danger at present appears to come from transmission of the virus within households.

Evidence has also come from people coming from abroad and having contact with one household, which has picked up the virus and then transferred it to another household. If three households were involved, it would be transferred not once but twice. That argument is clear, but I can understand why people will say, "Hang on a minute. I'm not infected." I accept that that can be the case, but we still need to be very cautious. The fact is that, two months ago, we were reporting four or five new cases a day but now have a couple of hundred new cases a day. We are not unique in that and it is worse elsewhere, so we must take action.

It is quite difficult to think back to where we were in February and March. The virus came up on us pretty quickly. However, we can look back and see that we have learned an awful lot. We must apply those lessons and do what we can with the new tools that we have in our hands. We must take action, and we believe that we are taking the right action. I am really sorry about the situation of the three people in your constituency. I hope that I have explained things to them; if I have not, I will be happy to try again.

10:15

Willie Coffey: Is the two-household restriction having a positive effect on the numbers, or is it too early to tell?

Michael Russell: I think that it is too early to tell. Yesterday, the First Minister thought that there were indications that, in Glasgow and the areas where restrictions were first imposed, that was having an effect, but it is too early to tell. I am not privy to that information today. We hope that the actions that are being taken will make a difference, but we will have to wait and see as time goes on.

The Convener: Sandra White is next. Before you ask your question, could you declare any relevant interests, please?

Sandra White (Glasgow Kelvin) (SNP): I have no relevant interests to declare. This is the first time that I have attended a meeting of the committee as a substitute, and I thank the committee for allowing me to do so.

Cabinet secretary, I would like a wee bit of clarification. You said that communication is important. The fact that the legislation is to be extended until March 2021 will come as quite a shock to many people, because although it deals with specific groups of people, such as adults with incapacity and prisoners on remand, it indicates to the general public that we do not know whether the current situation will continue even beyond March 2021. I would like a wee bit of clarification on that.

If we are fortunate enough to get control of Covid, is there a caveat in the legislation that would allow us to reduce the extension? I am particularly interested in the regulations that deal with adults with incapacity and guardianship, because we are talking about people's human rights.

Michael Russell: I think that it would be useful if I gave an overview of what the timescales are and how they operate, because that will come up when the committee looks at the Aberdeen City regulations, which expired after three weeks.

When the two emergency bills went through, there was a slight variation from the UK situation, which involved a two-year process that was split up into six-month periods, but not for renewal. We said that we would renew our provisions every six months, as we thought that that was appropriate and commensurate. We also have the ability to end provisions and to suspend provisions; we can do that by regulation. We have the opportunity to look at what we are doing and to ask, "Do we still need this?" and that is what we do—we have suspended a number of provisions, and we have done so again in the present circumstances.

If the provision is for six months, we can simply not renew it, or we could withdraw the whole thing. However, I think that it is sensible to have a period of time in which we understand that the provisions are in effect and are available to us. It would have been nice not to have to renew the provisions, but I think that the circumstances are such that I hope that nobody would deny that we must continue with many of them. The period for renewal in the legislation is six months. Therefore, we must renew the provisions every six months.

As you can see from the detail in the regulations, we have suspended some things and ended other things, and we will continue to do that. We bring such proposals to the committee for discussion.

Sandra White: Thank you for that clarification. It is important that the public know that proposals come to the committee and that the legislation can be reviewed.

As a member of the Health and Sport Committee, which considers a great deal of legislation, I know that sometimes the process is very quick and at other times it is less quick. I have concerns about how long it might take for restrictions to be reviewed and reductions in them to come into effect.

Monica Lennon and the convener mentioned the situation regarding adults with incapacity and the children who are the subject of guardianship orders. I take on board exactly what you have been saying, but is there advocacy for those children and adults? Are they aware of what is happening to them and why?

Michael Russell: Since, as I indicated earlier, portfolio ministers deal with operational detail, the best thing that I can do is make sure that you and the committee get a briefing on exactly how that takes place, so that you are confident that it is taking place in the right way. I undertake to do that.

Sandra White: My last question is related but is perhaps about the future. I am concerned about Scotland's standing with reference to the European convention on human rights, and in consideration of the Brexit situation that has come about. As we look to January next year, how will that affect our human rights, or the human rights aspects of the legislation? Will there be an effect?

Michael Russell: If the UK Government were to pursue the suspension or alteration of the ECHR, it would have a profound effect on all our lives.

To be fair to the UK Government—I do try to be fair—it has said that that is not its intention, although it keeps briefing that that is its intention. In order to predict what was going to happen with Brexit or with the UK Government, you would require not me but Mystic Meg to give evidence. I cannot tell you.

Sandra White: I thought that I would ask anyway.

The Convener: Thank you for that.

Our final question comes from Graham Simpson. I ask him, like others, to declare any relevant interests before asking his question.

Graham Simpson (Central Scotland) (Con): Thank you very much, convener. It is actually my second appearance at the committee; as in the first, I have no relevant interests to declare.

I want to explore a couple of areas. The first is about the six-month extension that the Scottish Government is asking for. I want to be clear in my

mind on what basis it is asking for that, given that, when the Parliament originally granted extraordinary powers, we were in an emergency.

Things have changed since then, thankfully. Far fewer people are in hospital—that is a really good thing—and far fewer people are dying of Covid. I accept that the infection rate is going up, but, on the basis of the numbers of people in hospital, why are you asking for a six-month extension? What would be the cut-off under which you would not ask for a further extension?

Michael Russell: To be clear, do you mean a further extension beyond six months?

Graham Simpson: Yes. Assuming that the Parliament agrees to another six months now, we could still have the virus at the end of that time—if so, would it be your view that the emergency powers should continue?

Michael Russell: Clarity comes from the route map and its phasing, and the question whether or not we have reached phase 4. Phase 4 would be an indication to all of us that, in essence, we had moved on, to a situation in which the virus was not seen as a continuing public health risk—I am just looking for the exact definition of phase 4—and that would lead us to the view that the moment was suitable for saying that the legislation might not be required.

We are not there. We are still absolutely in phase 3. As you know, the First Minister indicated last week that, for example, some of the indicative dates that we had set cannot now be met, and that there has been a move backwards on households meeting together. That indicates to us that there is still a requirement. We are still in the pandemic.

The global evidence is such that it is difficult to say what will happen next.

Nobody would be more pleased than you or I would be if it turned out that what is happening is a mere blip, if things subsided and everybody thought that we could move to phase 4. However, we are nowhere near that—indeed, quite the reverse is true. In Scotland, we are seeing a mounting number of individual cases and the number of positive tests rising above 3 per cent. We can look at that as a threshold in European terms. The new European travel recommendations, which the Irish Government has now signed up to, include test positivity above 3 per cent as one of the thresholds to move from one category to another.

A number of tests would be applied, but the general question is: are we in a position in which we can do without the legislation? I think that the answer to that question is no, but I very much agree that we should be critical of each item in it and that we should examine each of those items.

That is why the six-month period is not an absolute. We have the two-monthly reviews. We have suspended things after them, and we can continue to do so. The individual parts of the legislation can be examined in those reviews.

The two-monthly reviews have been comprehensive, and I pay tribute to Pamela Wilkinson and her colleagues for the work that they have done. Those reviews are full of detail and the reports on them are available. We will continue to report in that way.

Graham Simpson: The problem with that, of course, is that the Parliament does not get an opportunity after two months to say yes or no to keeping the powers. I want to be clear about what you are saying. Are you saying that, if we move into phase 4, the powers will no longer be required?

Michael Russell: I would have thought that moving into phase 4 would be one of the triggers, but I am not the arbiter of that. It is quite clear that the chief medical officer would be the person with the strongest influence, but there would have to be a discussion and a debate. I am trying to indicate that, if we were in phase 4, that would be one area in respect of which we would say that we think that we have made significant progress, so the legislation and the regulations would be one of the issues. I cannot give an absolute answer to that question, but nobody—including me—wants the powers to continue for a moment longer than necessary. In those circumstances, that would be a consideration.

I do not know whether Pamela Wilkinson has the exact definition of phase 4; I have not found it here. If we are not going to read it out now, it might be helpful to provide the definition of phase 4 to the committee and to remind it of that as one of the issues that would obviously be considered and of importance. However, the chief medical officer has been making the recommendations on moving from phase to phase, and one would have to be very aware that.

Graham Simpson: Okay. That would be useful.

My other line of questioning is about the procedures that you are using to introduce regulations. You tend to use the made affirmative procedure. For any members of the public who are watching, that essentially involves the Government introducing regulations without the scrutiny of the Parliament; the scrutiny comes later. The Parliament is asked what it thinks once the law is in place.

Other members have asked questions that suggest to me—I have felt this for a while—that it would be better if you presented to the Parliament what you wanted to do; the Parliament could then scrutinise that, ask questions, and vote on it. That

would be better for everyone. It would be better for the Government and the Parliament, because we would then be seen to have done our job. We would be able to iron out any discrepancies—other members have already raised discrepancies. What do you think about that?

Michael Russell: You are, of course, a former convener of the Delegated Powers and Law Reform Committee, and your knowledge of the negative, affirmative, superaffirmative and made affirmative procedures is without question, so I am slightly nervous about jousting with you on those issues. However, the made affirmative procedure applies because there is an urgency to putting in place regulations, specifically.

Let us take an example: you took part in the phone call on Friday afternoon about the situation in Lanarkshire. We were doing guidance there, but there are circumstances, such as in the Aberdeen situation, wherein there are regulations—the difference is the closure of premises. That was a matter of urgency: there was a continuing spread, and delay would allow it to get worse.

In my view, a decision that is made should operate there and then. We have had examples elsewhere, such as south of the border, of regulations that were made but were not operable for a week or 10 days. If those regulations are absolutely essential there and then, they should be made there and then.

I would not accuse Mr Simpson of misrepresenting me, but there is another way to look at the made affirmative procedure. It provides members with the opportunity to question—as I indicated, I have been to the committee 10 times to answer questions, debate and discuss. It provides members with an opportunity to vote, because the committee gets to do so and the chamber does too. The procedure is not wholly without scrutiny; the question is whether that scrutiny takes place before or after the regulation is effective. The made affirmative procedure is rare, but these are exceptional public health circumstances and I believe that it is the right procedure. I am not known to play fast and loose on such matters and I would not recommend its use in many circumstances, but these are the right circumstances.

10:30

Graham Simpson: I certainly do not accuse you of playing fast and loose. I have a strong view, however, that the Parliament should be able to scrutinise things before they happen whenever possible. I accept and am also of the view that the Government should act quickly if there is a genuine need to do so.

You could have asked the Parliament first, on a number of occasions, which would also have helped to explain things to the public in a way that has perhaps not happened. I ask you to reflect on the fact that, in future, it would be better to involve the Parliament in the first place and not after the event.

Michael Russell: I hear what you are saying, Mr Simpson. With regard to the improvement of regulation and legislation, my ears are always open—as is my brain.

The Convener: We now move to agenda item 2, which is consideration of motion S5M-22519, on the instrument on which we have just taken evidence. The SSI relates to the extension of the expiry dates of provisions in the Coronavirus (Scotland) Act to 31 March 2021.

Motion moved,

That the COVID-19 Committee recommends that the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 [draft] be approved.—[*Michael Russell*]

Motion agreed to.

The Convener: We turn now to SSI 2020/249, which is a negative instrument. That means that Parliament has 40 days to consider any motion to annul the instrument. We have taken evidence on the instrument from the cabinet secretary this morning, and no motion to annul has been lodged. Are members content that that concludes our scrutiny of that negative instrument? I see that members are content.

Health Protection (Coronavirus, Restrictions) (Aberdeen City) Amendment Regulations 2020 (SSI 2020/253)

Health Protection (Coronavirus, Restrictions) (Directions By Local Authorities) (Scotland) Regulations 2020 (SSI 2020/262)

The Convener: Item 4 is our second evidence session. We will take evidence again from the Cabinet Secretary for the Constitution, Europe and External Affairs on made affirmative instruments SSI 2020/253 and SSI 2020/262.

The cabinet secretary is accompanied by two officials for this evidence session. I welcome Amanda Gordon, deputy director, local interventions, outbreak management, and Luke McBratney, bill team leader, Coronavirus (Scotland) Bills, Scottish Government.

The cabinet secretary has already made opening remarks but, before we turn to questions, does he want to make a statement?

Michael Russell: I will briefly outline what the instruments are about, if you will allow me to do so, convener. That would save some time.

The Convener: Yes, indeed.

Michael Russell: Thank you. With regard to the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Amendment Regulations 2020, the original regulations with respect to Aberdeen took effect on 5 August and required businesses in the city to close. In our view, that was a necessary and proportionate measure to control an outbreak of Covid-19 in Aberdeen city, which was associated with a number of bars. Those regulations were amended on 24 August to reflect the opening of additional businesses in line with the route map. Thanks to the extraordinarily hard work of everyone who was involved in getting the Aberdeen city outbreak under control, particularly the people and businesses of Aberdeen, the restrictions were allowed to expire after 21 days. Aberdeen City Council is now fully in line with the latest restrictions that the Scottish Government has published.

The Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 make provision for a local authority to give directions relating to specified premises, events and public outdoor places in its area. The Scottish Government laid the regulations by way of the made affirmative procedure on 27 August. The regulations entered into force on 28 August, and a plenary vote will take place in due course.

We have brought forward the regulations to ensure that local authorities have the power to take targeted local action to limit or stop the spread of coronavirus. A direction may be given only if the local authority considers that the necessity and proportionality conditions that are set out in the regulations have been met. The local authority must review the direction at least once every seven days, and it must be revoked—or revoked and replaced—when it is determined, on review, that the requirements of necessity and proportionality are no longer met.

I hope that those comments are helpful with regard to both sets of regulations.

The Convener: Thank you. Yes, that was helpful, not just as a reminder but as a brief summary.

I will ask the first question. As you said, today, we are looking at an SSI relating to local lockdown measures in Aberdeen, which was the first example of local restrictions being imposed by regulation. The policy note on the other SSI that we are considering, on directions by local authorities, says:

“We have learned from the experience of dealing with the first set of local outbreaks. These Regulations provide the tools that those on the ground dealing with local outbreaks consider that they would have needed in order to have a chance of earlier controlling or preventing these.”

Can you elaborate on the learning from the lockdown in Aberdeen and say how that has influenced the Scottish Government’s approach to containing outbreaks in other local areas?

Michael Russell: That is a really important question, because the process of learning is what we have to engage in throughout this outbreak, and we learn a great deal even from the most difficult set of circumstances.

Let me start at the very beginning. Following consideration by those involved and, eventually, by the Cabinet sub-committee on Scottish Government resilience, it was deemed necessary to put in place measures to control an outbreak in Aberdeen, and in Aberdeen city in particular. Those measures came into effect at 5 o’clock on Wednesday 5 August and lasted until 24 August. They dealt with restaurants other than hotel dining rooms that were open exclusively for the use of residents and staff; cafes, including workplace canteens, subject to some definition; bars, including bars in hotels and members clubs; and public houses. They did so because there was substantial evidence that those were the places in which the virus was spreading. In those circumstances, it was really important that we considered and learned from the experience.

Why was restricting hospitality necessary? It was necessary because of the high risk of transmission. Physical distancing was an issue—where physical distancing is less than 2m, the risk of transmission through face-to-face contact is increased. Further, where there is high occupancy of a space, there is a reduction in physical distancing and an increased risk of, for example, touched-surface contamination. There was also an issue around high noise levels, because the fact that someone has to shout to be heard means that there is an increased risk of the dispersal of respiratory secretions and therefore of transmission. Another issue was poor ventilation. Quite clearly, in many licensed premises—not that I spend an awful lot of time in them—there is poor ventilation, which reduces the dilution and removal of viral load. Finally, in any case, there is an increased risk in licensed premises of customer non-adherence to recommended prevention methods. For all those reasons, the approach was a necessary step.

We have learned that those are the things that we need to do, because the virus outbreak in Aberdeen was contained. However, we also know that there are different sets of circumstances in different places. For example, the west of Scotland

outbreak involves the virus being transmitted in different ways from the way in which it was transmitted in the Aberdeen outbreak.

We have learned things from the Aberdeen outbreak that can be applied elsewhere. Where we have to close premises, we need regulations to do so. However, in small outbreaks, it might be that the sledgehammer is not required. It could be that a local authority could deal with an issue in which the tracing process identified a single premises as being the source, and it would be best to be able to deal with that single premises, first of all by persuasion and then, if necessary, by regulation. The second set of regulations allows that targeted action to be taken. We do not need to use a sledgehammer; we can act quickly. Local authorities have the power to do that, but the action must be necessary and proportionate and must not last a significant length of time.

Adding to the armouries of local authorities is important, and that is what we have tried to do, based on our learning.

The Convener: You have covered some of the issues that I was going to raise in my final question, which concern the distinction between using regulation and using guidance, which I have raised with you before. With regard to your experience with Aberdeen and the west of Scotland, what has that distinction meant in practice, from the Government’s perspective?

Michael Russell: That distinction is an important one, because we want to persuade people to do things. The approach that the Government and the police have taken has involved the four Es—engage, explain, encourage, enforce. We want to encourage people to do things but we might have to end up having to tell people to do things, and we need regulations in order to do that. Unless people are willing to close premises voluntarily, we need regulations to make them close them.

In the end, regulations might be the necessary backstop. The First Minister has made it clear that we have guidance in place in the west of Scotland but that, if it is not observed, we might have to move to regulation.

The two—regulation and guidance—are also not separate. You will note from the directions by local authorities regulations that guidance is being issued. That guidance comes in two forms; one is guidance for particular sectors, such as the licensed trade, and the other is guidance on the application of the regulations. That guidance will be issued this week. It is not needed, but it helps with interpretation. Therefore, the two can go together.

10:45

Willie Coffey: The Aberdeen experience could probably happen anywhere in Scotland, with measures having to be taken. If clusters continue to occur in different towns and villages in Scotland, for whatever reason, will that prevent us from moving to phase 4? Is the key driver that we have to stop clusters occurring to enable us to move to phase 4?

Michael Russell: The First Minister has been very clear that the first defence is us and how we behave, such as by observing FACTS, ensuring that we wear our face masks, that we are not in crowded places and that we are doing what we need to do. The next line of defence is the test and protect system, which is really important.

It is not so much about being able to move on as it is about ensuring that the virus is controlled and does not become out of control—essentially, that it is not transmitted again in the community in an exponential fashion. That would take us back to where we were, and we do not want to go back there.

It is not that clusters prevent us from moving on. This is a necessary step that we have to take, and we can see that, if it is done properly, it will work. It worked in Aberdeen and has worked in other places. We saw a small initial cluster in Gretna and Annan, the cluster in Aberdeen, the cluster in a meat processing plant and, more recently, the cluster in the Borders. There are others, too, and the work that is being done through test and protect is absolutely vital.

Let us first of all observe the rules, because that is the best thing to do. Let us keep washing our hands, wearing face coverings and ensuring that we observe the rules in terms of family transmission. Let us also observe the rules when we go out and work from home when we possibly can.

We need then to ensure that test and protect is working well, effectively and efficiently, which it is. We have the app as well, which has had a tremendous start.

As long as we do those things, we believe that we can keep this under control at present. Of course, other things come into play. There is better treatment, which appears to be a factor, and there is continuing work to secure a vaccine. Those things are also important.

However, the foundations of all that are the regulations and guidance that help us do the right thing, but which also make sure that if we cannot be helped to do the right thing, we are forcibly assisted to do it.

Willie Coffey: [*Inaudible*.]—the virus is no longer a public threat to health. Does a significant

period of time have to elapse with no significant clusters, or will we have to judge it on a weekly basis?

Michael Russell: There is a definition, and I am sorry that I was not able to quote it to you earlier. I need to find the definition in the documentation that I have in front of me. However, it is a very clear definition, and I want the committee to have it. In fact, it would be useful to remind ourselves of the definitions of phase 4, of the role of the CMO and of when we can move to phase 4. We are not there—we are a long way from it, in my view. However, getting there should be our ambition.

Maurice Corry: What effective communications advice has the Scottish Government given to local authorities to accompany the targeted powers that they have been given by the Government to tackle local outbreaks?

Michael Russell: As a former local authority councillor, you will know how important it is to have not only the regulations but the guidance, so that local authorities are absolutely clear about how the matter is to be handled. They have the regulations, which I have outlined—and which I am sure that Mr Corry has read—together with the sectoral guidance relating to the particular sectors and industries that they deal with, and the detailed guidance. Local authorities have been involved in discussing the detailed guidance. Although they can operate the regulations and use the powers without the detailed guidance, it is helpful to them to have it. The final draft guidance will be issued this week, which will help them to understand the issue that Mr Corry has raised, and other issues.

The powers exist and have been used in the sense that there have been instances in the past fortnight in which local authorities have had to say to individual premises providers, “Look, we can do this the easy way or the hard way. The easy way is that you must understand that the premises are a risk and we want you to close for that reason, or we can pursue the matter under the powers that we have.” That is important. I hope that the success of the powers is not in their use, but in having them available.

Sandra White: I am very much in favour of local authorities having the powers in the regulations and the guidance. I am a great believer in the fact that, because they are on the ground, they know exactly what is happening in that respect.

In your opening remarks, when you referred to Aberdeen, you mentioned the transmission situation in hotels, restaurants and so on. I do not know whether you will know the answer to this, but perhaps you could speak to the Cabinet Secretary for Education and Skills. University and college students are going back, and—certainly in my constituency—it is freshers week, which involves

students showing other students around. I hope that we will not, but if we had an outbreak in a university or a college, would the local authority have the powers to do something about that—I would not want universities and colleges to be closed down—or would the Government have to intervene?

Michael Russell: I would like Amanda Gordon to answer that question, if possible. Before she does so, I will go back to phase 4 of the route map. I am now able to tell you exactly what phase 4 is, which might be useful. This is how it is described:

“In this, the final phase in our transition through the crisis, the virus remains suppressed to very low levels and is no longer considered a significant threat to public health, but society remains safety conscious. All WHO criteria continue to be met. A vaccine and/or effective treatment may have been developed. Test and Protect continues to be fully operational in all 14 Health Board areas. Scotland is open with precautions and the importance of hygiene and public health are emphasised. It could be many months, or longer, until we reach this phase.”

That description makes it absolutely clear that, when we are in phase 4, we will still be active and vigilant, and we will still take all the measures that we need to take, but we will have moved into the stage at which the virus has been

“suppressed to very low levels and is no longer considered a significant threat to public health”.

It is probably helpful to have that on the record, and I apologise for taking a bit of time to get it to you. I am grateful to those who made sure that I had it in front of me.

Perhaps Amanda Gordon could say something about university interaction with local authorities. We might well want to consider the issue more closely, but, if Amanda Gordon has anything to contribute, that would be helpful.

Amanda Gordon (Scottish Government): It will not surprise members to hear that that is something that we are very conscious of and are thinking a lot about. We are working closely with the universities and some of the stakeholders in that area to do scenario planning, so that we can work through exactly what might be needed.

As the cabinet secretary has already alluded, it is important that, when we intervene, we do so in a targeted way. Our experience so far has taught us to look at what is happening in an outbreak and to bring in interventions that are proportionate to the nature and extent of the public health risk.

My answer is that it depends a bit on what we see. There are some powers for local authorities to take action but, depending on what an outbreak looks like, it might be more appropriate for the Scottish Government to step in.

If it provides assurance, I can say that we are scenario planning and working to be as prepared as we possibly can be. We recognise that Covid will always throw us surprises and curve balls, but we are doing as much as we can to be as prepared as possible. I hope that that is helpful.

Sandra White: I hope that nothing happens, and I am pleased that you are working with the university sector.

Thank you, convener—that is all that I wanted to ask.

Alison Johnstone: Communication is absolutely key and is one of the major ways in which we ensure that public health is optimised during the pandemic. What lessons have been learned to date about communicating clearly with the public? What liaison is going on between local and national Government to ensure that we continue to have clear communication?

Michael Russell: As I have indicated, there have been strong discussions with local government, which has been involved in developing guidance. Local government is a key partner in all this—for example, environmental health officers and trading standards officers have had roles and have been involved—and there is a lot of pressure on local authorities, as there is on the Government. Discussions and debate have been positive.

On communication more generally, there are many lessons to be learned, one of which is bound up with the consolidated regulations that we will bring to the committee, which—as the convener indicated at the beginning of the meeting—have already come into effect.

When I was preparing to appear before the committee to give evidence on the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 13) Regulations 2020, even I was beginning to wonder what was in the fourth set of amending regulations, and I think that we have all got to that stage. It is important that we put that stuff together, that we are much clearer about what the situation is and that we have clear and consistent messages.

It is a clear and consistent message that we have had to move from people having a wider ability to visit others in their homes back to a situation in which groups of a maximum of six people from two households can meet. That is easy to understand. It is easy to understand why we have done it, because people can see the increase in the number of cases, and it is easy to understand what the regulation is now, no matter what it was a month ago.

My view, which I express whenever I can, is that we should seek simplicity, so that the messages

are easy to understand and people know why they are in place and what they have to do. That is why the FACTS meme is particularly important and why we should use it.

Alison Johnstone: [*Inaudible.*]

Michael Russell: I am sorry, but I cannot hear Alison Johnstone's question.

The Convener: Alison, could you please repeat your question from the beginning?

Alison Johnstone: Certainly. Is there more that we could be doing to ensure that there is never any confusion between guidance and regulation, and to stress how important it is that people follow both?

Michael Russell: That is a good point. As democrats, we are keener on guidance than we are on regulation. We would like to persuade people to do the right things. I hope that the explanation that I have given of what I think the difference between the two is has been helpful. Perhaps we should talk about that a bit more.

After a lot of thought—we have not taken this step lightly or ill-advisedly—our general message to people is, “We think you should do this in order that you are safer, those around you are safer and the society in which you live is safer.” If we stress that, everything flows from it.

11:00

Annabelle Ewing: I have a question about the regulations that deal with directions by local authorities. I have frequently been contacted by constituents who say that, when they are in X shop or Y shop, they never see anybody wearing a face covering and it is all very lax, and that, when they try to take up the issue with relevant officials in the local authority, they do not get much of a hearing and nothing changes. Would the regulations allow local authorities to do anything about such situations?

Michael Russell: The regulations in question are specifically about targeting and closing premises, but doing that would be at the extreme end of the scale.

I go back to the four Es: engage, explain, encourage, enforce. If people are worried about the non-wearing of face coverings in shops, they should undoubtedly engage with the shop and with the local authority about that. The local authority has an ability to deal with that situation and to advise on the public health issues involved. Explanation and encouragement should be given, but in the end, if a shop is proven to be a vector of the virus and it will not act, the regulations before the committee will be available to the local authority to close it down; they would enable a

local authority to close down anything that was not operating properly. However, we should remember that the action that is taken must be proportionate and must be reviewed every seven days.

That will happen where things are particularly bad, where there is proven transmission and where those who are responsible are refusing to take action or, worse, they are saying to their staff—regrettably this does happen, although it is rare—“Don't talk to the public health officials and don't take part in this, because your job's on the line here.” In such circumstances, the regulations give authorities the power to say, “Sorry, we're not having that.”

Annabelle Ewing: On the other side of the coin, it is not inconceivable—although it is less likely—that erroneous information could lead to action being taken. I note that there is provision for an appeal to be made to the local sheriff court in those circumstances but, on a practical level, as we know, there is quite a backlog in the courts. Given that the timescales are so short—seven days for the initial application of the order—what consideration has been given to the remedy in the context of a situation in which, as a matter of fact, there is such a backlog in the sheriff courts?

Michael Russell: I think that it would be difficult to find another remedy, although I recognise what you say, and I am sure that that would be recognised in the courts, too. If you are appealing, as this is a judicial process, you have to do it within the judicial process. It would be difficult to have appeals to others in such circumstances, particularly as the decision will hinge on matters of law, such as whether the actions that were taken by the local authority were necessary and proportionate. That would be the key issue.

The regulations are not perfect, but they are necessary and proportionate, which is why they need to be supported.

Shona Robison: I want to explore the capacity of local authorities in making such difficult decisions, which need to be necessary and proportionate and based on public health advice. Can you say more about the advice and support that are available to local authorities in making some of those decisions? What steps would a local authority take to establish the correct public health advice and other specialist advice that might be required? Would that be provided by the Scottish Government or the available agencies? How is such a request from local authorities prioritised in their workloads? How does it work in practice if a local authority flags up that it has concerns? What steps are taken?

Michael Russell: The best thing that I could do is let the committee have the guidance when it is finalised. That would be the right thing to do. The

guidance has been developed with local authorities and it takes account of the concerns that they have, and I think that that would be more eloquent in setting out what is required than anything that I can say here. With your permission, convener, we will undertake to furnish the committee with the guidance and, of course, if there is anything in the guidance that there are further questions about, it is a reasonable assumption to make that I will be back at the committee before too long.

The Convener: I would be grateful if you could do that. Thank you.

Shona Robison: I am happy with that. I want to understand the support and advice that are available to local authorities in making decisions, because it is quite a responsibility for them, so it would be helpful if the cabinet secretary could furnish us with that in writing.

The Convener: As there are no further questions, we move to agenda item 5, which is consideration of the motions on the made affirmative instruments that we have just taken evidence on. We will consider each motion in turn. I invite the cabinet secretary to move motion S5M-22520.

Motion moved,

That the COVID-19 Committee recommends that the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Amendment Regulations 2020 (SSI 2020/253) be approved.—[*Michael Russell*]

Motion agreed to.

The Convener: I turn to the second instrument under agenda item 5 and invite the cabinet secretary to move motion S5M-22574.

Motion moved,

That the COVID-19 Committee recommends that the Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Regulations 2020 (SSI 2020/262) be approved.—[*Michael Russell*]

Motion agreed to.

The Convener: I thank the cabinet secretary and his officials for their attendance; you are now free to leave the meeting. I will briefly suspend the meeting.

11:09

Meeting suspended.

11:10

On resuming—

**Coronavirus (Scotland) Act 2020
(Suspension: Muirburn) Regulations 2020
(SSI 2020/260)**

**Coronavirus (Scotland) Act 2020
(Suspension: Adults with Incapacity)
Regulations 2020 (SSI 2020/267)**

**Coronavirus (Scotland) Act 2020 (Eviction
from Dwelling-houses) (Notice Periods)
Modification Regulations 2020 (SSI
2020/270)**

The Convener: Agenda item 6 is consideration of three negative instruments. The procedure for negative instruments allows 40 days for the Parliament to consider whether to lay a motion to annul, which has not been done for any of these instruments. This is members' opportunity to raise any specific points that they wish to as part of our formal consideration of the instruments.

No member has indicated that they have any comments or queries. Are members content that this concludes our scrutiny of the instruments?

Members indicated agreement.

The Convener: The committee will publish a report to the Parliament in the coming days, in which we will set out our decisions on the statutory instruments that have been considered at this meeting.

That concludes our business for today. I advise members that no meeting is scheduled for next week—the week commencing 21 September—but a meeting will be scheduled for Wednesday 30 September. The clerks will provide members with further information about that meeting in due course.

Meeting closed at 11:13.

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

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