



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# COVID-19 Committee

**Wednesday 2 September 2020**

**Session 5**



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**Wednesday 2 September 2020**

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**COVID-19 COMMITTEE**

**14<sup>th</sup> 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:**

Gerry Hendricks (Scottish Government)

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

Liam McArthur (Orkney Islands) (LD) (Committee Substitute)

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

Rebecca Whyte (Scottish Government)

**CLERK TO THE COMMITTEE**

Sigrid Robinson

**LOCATION**

Virtual Meeting



## Scottish Parliament

### COVID-19 Committee

*Wednesday 2 September 2020*

*[The Deputy Convener opened the meeting at 10:00]*

#### Interests

**The Deputy Convener (Monica Lennon):** Good morning, and welcome to the 14th meeting in 2020 of the COVID-19 Committee. We have received apologies from Beatrice Wishart and Ross Greer, who are attending other parliamentary committees. I welcome Liam McArthur, who is a substitute for Beatrice Wishart, and Alison Johnstone, who is a substitute for Ross Greer.

At the plenary session on Thursday 20 August, the Parliament agreed changes to the committee's membership. Our former convener, Murdo Fraser, and our colleague Adam Tomkins have moved on to take on other committee roles. On behalf of the committee, I thank Murdo and Adam for their valued contributions to the committee's work.

I welcome our new members, who are Donald Cameron and Maurice Corry. Under agenda item 1, I invite them to declare any registrable interests relevant to the committee's remit.

**Donald Cameron (Highlands and Islands) (Con):** I have no relevant interests to declare.

**Maurice Corry (West Scotland) (Con):** I have no interests to declare.

## Convener

10:01

**The Deputy Convener:** The next item on our agenda is to choose a convener. Through motion S5M-21506, the Parliament decided that the convener of the committee will be a member of the Scottish Conservative and Unionist Party. I invite either of our SCUP members to nominate formally an individual for the position of convener.

**Maurice Corry:** I nominate Donald Cameron.

**The Deputy Convener:** Do members agree to choose Donald Cameron as our convener? I see nodding and thumbs up.

*Donald Cameron was chosen as convener.*

**The Deputy Convener:** I congratulate Donald on his appointment. I am sure that I speak for everyone on the committee when I say that we are all looking forward to working with you. I now hand over to Donald to convene the rest of the meeting.

## Coronavirus Acts Reports and Subordinate Legislation

### Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 11) Regulations 2020 (SSI 2020/241)

### Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 12) Regulations (SSI 2020/251)

10:03

**The Convener (Donald Cameron):** I thank Monica Lennon for her kind words, and for convening the first part of the meeting. I greatly look forward to working with all members on the committee and with the clerking team.

The substantive agenda item is to take evidence on the Scottish Government's second two-monthly report and the first freedom of information report to the Scottish Parliament under the coronavirus acts. We will also take evidence on two Scottish statutory instruments.

I welcome our witnesses. We have Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs. He is accompanied by supporting officials from the Scottish Government: Gerry Hendricks, head of the freedom of information unit; Pamela Wilkinson, from the coronavirus legislation co-ordination reporting team; and Rebecca Whyte, Health Protection (Coronavirus) (Restrictions) Regulations co-ordinator.

I invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell):** Congratulations on your appointment as convener of the committee.

I understand that this is the committee's 14th meeting, and it is the ninth occasion on which I have appeared in front of it. I am glad to be here again to have the opportunity to discuss with you a further two sets of amending regulations, which amend the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020—more commonly known as the lockdown regulations.

On 20 August, the Scottish Government published an updated route map that gave further indication of the order in which we will, carefully and gradually, seek to implement additional changes in phase 3. The First Minister also announced the outcome of the seventh review of the restrictions and requirements that were set out in the principal regulations. The outcome of that

review and the assessment of the evidence was that it was still not appropriate to move to phase 4 of the route map to easing lockdown. A further review will take place on 10 September, which is a week tomorrow.

The amending regulations that are to be discussed today give effect to aspects of phase 3 of easing lockdown, and also strengthen some of the rules and mitigations that we have in place to keep the virus under control. The Scottish Government made amending regulations by way of made affirmative procedure on 13 and 21 August. Those regulations entered into force on 14 and 24 August, and a plenary vote will take place in due course.

The amending regulations make a number of adjustments to the principal regulations. Those are to adjust areas in which the decision to implement further aspects of phase 3 necessitates a change to the restrictions on businesses and individuals. The regulations have allowed bingo halls, amusement arcades, casinos, bowling alleys and funfairs to reopen, and they have allowed organised outdoor activity to resume and preparatory work—including rehearsals—to recommence in theatres and concert halls ahead of their full reopening later under the route map.

The regulations also make changes to the principal regulations to put in place additional measures that are necessary to limit the spread of Covid-19. They mandate that specified hospitality settings must collect and record minimal contact data from visitors to their premises in support of contact tracing as part of the national health service's test and protect programme. There is also a requirement to provide that information on request to a public health officer to allow contact tracers to give appropriate public health advice to possible close contacts of individuals who have tested positive for Covid-19.

As is set out in the updated route map, we have not yet set a date for when some of the proposed changes in phase 3 will come into force. As I said, the next review of the regulations is a week tomorrow, and the First Minister will provide an update to Parliament at that point.

I am pleased to be able to talk and answer questions on the Scottish Government's second report on the coronavirus acts, which—in line with the requirements of the Scottish acts and our commitment to report on the provision of the UK act—was laid before Parliament and published on 11 August. Our second report covers the second reporting period under the legislation, to 31 July. It includes reporting on the provisions under part 1 of the second Scottish act for the first time, as well as on SSIs made by the Scottish ministers where the main purpose relates to coronavirus. That excludes SSIs made by the Scottish ministers

under the first or second Scottish acts, or the UK act, as those are already being reported on. The second report also reflects the new duty that requires the Scottish ministers, in reporting, to take account of information about the nature and number of incidents of domestic abuse during each reporting period.

We have reported on the status and operation of all powers under part 1 of the first and second acts and the powers of the UK act on which the Scottish Parliament gave legislative consent. In our second report, we have also reported in more detail on a set of 22 provisions across the Scottish and UK acts that we judge, at this time, to have the most impact or to be of interest to the Parliament for other reasons. For those provisions, we have sought to provide detail over and above the reporting requirements that are set out in the Scottish acts on the operation of the powers.

Although it is not the purpose of today's session to consider the future of the coronavirus legislation itself, during my statement on the second report, on 11 August, I confirmed my intention to lay regulations for Parliament to consider that seek to extend the Scottish coronavirus acts from 30 September 2020 to 31 March 2021, and to lay regulations to expire certain provisions within the legislation that are deemed to be no longer needed. Those regulations were laid on Monday 24 August. I look forward to engaging further with the Parliament and the committee on the proposed extension of the acts in due course.

I am also happy to discuss the freedom of information report that is required by paragraph 12 of schedule 4 to the second coronavirus act, which we laid before Parliament on 7 August.

I hope that you found those comments helpful, and I look forward to answering your questions.

**The Convener:** Thank you for your helpful comments.

I will begin with a preliminary question in relation to the restrictions that were imposed last night in the west of Scotland. I do not intend to get into the public health aspects; I wish to ask purely whether there is any prospect of forthcoming emergency legislation on those restrictions. I think that the First Minister described them as guidance, rather than legislative action.

**Michael Russell:** There would not be legislation as such, but regulation could be brought in. That is under discussion.

In recent weeks, the Deputy First Minister signed an order that gave local authorities certain powers to close premises. It may well be that regulation of that type is required. I took part in the Scottish Government resilience room—SGoRR—meeting last night, at which those matters were

discussed, and there was clear support for the measures among local authorities, too. At present, good practice is taking place, with good guidance.

I am sure that the First Minister will update members later today at First Minister's question time, and there will be a chance to question her then.

**The Convener:** I will move on to one aspect that struck me in the freedom of information report. It notes that, in the Scottish Government,

"half of the staff of the FOI Unit has been redeployed to coronavirus-critical roles."

What discussions has the Government had with the Scottish Information Commissioner about the effect that that might have and the impact of coronavirus on the unit's performance? Has the reduction in staff had an effect on the time taken to reply to FOI requests, for example?

**Michael Russell:** We said at the outset that it would have an effect. We should ask the head of the FOI unit, Gerry Hendricks, to comment on that, as he has staffing responsibilities.

Before he does so, I just make the point that there has been considerable redeployment of staff right across the Scottish Government. In the areas for which I am responsible, many staff are still working on coronavirus issues, and some staff have worked on their existing jobs and new coronavirus-related tasks. There has been a huge commitment from staff, which has been required usually when working from home. I would be surprised if that was different in the FOI unit, but perhaps Gerry can give some information on that.

**The Convener:** Yes, please—if you could help us on that, Mr Hendricks.

**Gerry Hendricks (Scottish Government):** We have engaged with the Information Commissioner on a regular basis on what has happened, in the Government generally and in the FOI unit. He is aware of the redeployment of staff.

In the interim, we have retrenched to focus on delivering casework advice to people who receive requests. Because some of our trained case handlers have been moved, we are finding that some people who have not been fully trained are now having to deal with FOI requests. We are focusing on providing them with advice when they get requests. We have also recently developed a tailored module, which we plan to roll out to some people, that takes them through the basics of responding to FOI requests.

We recognise that there has been an impact on our performance, since the pandemic has affected the Government so markedly. We are looking at steps that we can take to mitigate that as far as possible, and considering how we can recover.

**Michael Russell:** Gerry Hendricks is absolutely right that we are in no sense hiding the fact that there has been a deterioration in performance. We predicted that, because of the difficulty that existed. Indeed, the figures on that have been given both in the documents that you have before you and in a written answer to Neil Findlay from Graeme Dey.

**The Convener:** Annabelle Ewing has a supplementary question.

**Annabelle Ewing (Cowdenbeath) (SNP):** Thank you, convener, and congratulations on your appointment.

On the issue of FOI, we received an email this morning from a well-known FOI campaigner who referred to this sort of alarming confession that the Scottish Government has made that staff have been redeployed from the FOI unit. However, as the cabinet secretary has rightly reminded us, it was indicated from the outset that that scenario was very likely.

I make the point—many of my constituents would wish me to do so—that, although we are living through times when many of them cannot visit their loved ones without restriction, I think that their priority would be for us to get through the pandemic as quickly as possible. Then, we can get back to normal business vis-à-vis FOI and a whole host of other things. It is important to reflect what I imagine would be the view of many people who might be watching this meeting.

10:15

**Michael Russell:** I agree with Annabelle Ewing. We have said from the beginning that there would be pressure on staff, and there has been.

I want to put the matter in context. FOI is important—I have supported it all my political life and I will continue to do so—but it is not the only route by which information can be found. We have published almost 700 documents about the coronavirus in Scotland. We publish transcripts of the First Minister's statements and videos of her briefings on YouTube seven days a week, unlike the United Kingdom Government. We publish daily data, weekly figures and figures by health board area. Scottish Government statisticians have developed a data dashboard that provides summary information as well as detailed analysis across Scotland about health, indirect health and societal and economic impacts. There is a continuing process of parliamentary questions. A lot of information is available.

That said, we want to honour our commitments under freedom of information. We accept those commitments but, as Annabelle Ewing said, there also has to be a sense of realism.

**The Convener:** My final question is on the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 11) Regulations 2020, which, as you will be aware, require hospitality premises to collect information about visitors. Many of those premises, such as pubs, may not have experience of handling personal data on that scale. Could you advise the committee on what checks are being put in place to ensure that the data is collected in the proper way and is used for its intended purpose?

**Michael Russell:** I will ask Rebecca Whyte to say a word on that in a moment, but it is clear that it is unusual for premises to collect data in that way. Some people have been doing it very well, but some will require guidance and support. The information is recorded only for the purpose of provision to public health officials and cannot be used for any other purpose, and nor can it be used by the premises to contact customers directly.

The regulations are clear about what the data is for and what is required. We are all seeing the data collection process being followed on the rare occasions when we are in such premises. I was even at an exhibition briefly the other day at which data was being taken.

Advice on data protection has been provided and is freely available—there is no shortage of information and advice. We have made a commitment to keep that under review, because it is absolutely essential that it is done, and done properly.

Rebecca Whyte might want to fill out my answer.

**Rebecca Whyte (Scottish Government):** Where venues are collecting and retaining data in line with the regulations, the structure of data handling in respect of the general data protection regulation applies. Any available advice and support about how to process data in line with GDPR would apply to what venues do with the data. The purpose of the collection and processing of the information is clear.

I can check what the more detailed hospitality guidance says about that and provide a fuller written response to the committee, if that would be helpful. As it is a technical area, I do not want to give an impression of things that are happening that may not be exactly correct. As far as I understand it, support, advice and guidance are available so that businesses can make sure that they are in line with their legal responsibilities under the regulations and, as you would expect, are protecting and storing individuals' data in line with GDPR.

**The Convener:** I will take you up on your kind and excellent offer, as we would appreciate a



report in that regard. We go to Monica Lennon now for questions.

**Monica Lennon (Central Scotland) (Lab):** I had a brief connection issue earlier, but I hope that things will be okay for the next minute or so. I missed some of Annabelle Ewing's question and answer, though. This question is probably for Gerry Hendricks, but the cabinet secretary can take it if he wishes. Sticking with the issue of FOI, has the reduction in staffing caused a delay in the Scottish Government bringing forward a section 5 order under FOI legislation, which would extend the designation of bodies to include, for example, private care homes? If a delay has resulted, what are the plans to address that piece of work, given that there was an extensive consultation last year?

**Michael Russell:** This has not been a normal time and therefore it has been difficult to meet even existing commitments, let alone additional commitments. Gerry Hendricks can address that.

**Gerry Hendricks:** That has delayed our work on a section 5 order. Initially, we carried out a consultation and the Public Audit and Post-legislative Scrutiny Committee was also undertaking its post-legislative scrutiny, so we planned to—[Inaudible]—inform our work going forward in line with the consultation. That report was delayed because of the Covid outbreak, and since then we have retrenched to focus on supporting case handlers and have halted the further consultation that would be required to introduce a section 5 order.

When we introduce a section 5 order, we must consult all the bodies that are likely to be impacted by it. However, this is not a time when private sector care homes, for example, would be receptive to a consultation on the further extension of the Freedom of Information (Scotland) Act 2002. We will return to that as soon as we can, but it has just not been possible to do it in the interim.

**Monica Lennon:** Thank you for that explanation of some of the operational challenges. I will stick with the issue of transparency and care homes and turn to the question of reporting on care homes in the two-monthly report to Parliament. It is welcome to see some analysis of the Care Inspectorate's fortnightly reports, on which I had put forward amendments. It has been good for MSPs and the public to access the report, but when we have queries about an individual care home in our area, we cannot access information unless it is in that general report by the Care Inspectorate, and only if it happened to visit that care home in the previous two weeks. Can the cabinet secretary say something about what more could be done by regulations or other means to give Parliament more information on individual care homes?

**Michael Russell:** Many MSPs who have that issue within their area—I have it in my area and was dealing with it only this week—need to develop a relationship with the health and social care partnership that allows information to be provided, and with the care home, to understand what is taking place. I do not think that anyone would doubt that, as Gerry Hendricks said, proceeding with the section 5 order at this stage would simply not be possible, given the difficulties that exist. That is not to say that it should not be possible at some stage in the future. MSPs will be able to obtain information through the health and social care partnerships or the Care Inspectorate. They can also ask the Scottish Government what it knows about any individual care home. All those are avenues—[Inaudible].

**Monica Lennon:** Thank you, cabinet secretary. All those routes are familiar, but it is fair to say that the information and how it is cascaded is still quite patchy. However, that is something that we can return to in other forums. My final question is on the social care staff support fund, which I note from the report became operational on 24 June and is very welcome. Will subsequent reports contain further information about the operation of the fund and for how long it will operate?

I have heard some care workers and unions express concerns that there might be an expiry date or it might be time limited and some people are experiencing barriers. That is not really a matter for the cabinet secretary to address now, but I would like to get a general feel for how well that is going; it is something that we would hope to see for the duration of the pandemic, as long as we need it.

**Michael Russell:** I think that that was the commitment in the legislation, but I am open to suggestions about what future reports should contain and I am grateful to the team that works on those reports for being so thoughtful and so determined to make sure that the reports provide the maximum information. Indeed, as I indicated in my opening remarks, there are bits of this report in which we have drilled down even deeper into some issues because we recognised the interests and concerns that arose out of the first report.

I can tell Monica Lennon that I have noted—and, more important, I am sure that my team has noted—what she said about reporting on the fund, and we will look into that for the next report. These reports are remorseless—we have just done one and then another one comes along. The next reporting period is up to 30 September. Once we have sorted that out—I think that we are now working on a provisional date for the report to be issued—we can bear that point in mind for that report. Provided that the legislation is renewed, as

we hope that it will be, there will be at least three more reports, so we could do more work on that.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I have a tiny follow-up to Donald Cameron's questions on data collection. I would have asked what he asked. Might the Government consider putting a time limit on how long data can be held by the hospitality sector and other sectors that have to gather it? The data has to be kept for a minimum of 21 days—I just wonder whether having a time limit would give people more confidence.

I will move on to something of a wee bit more substance in relation to SSI 2020/251, the second of the two regulations before us. Do we have information about the effect of outdoor events on the spread of the disease? We have a general exemption for organised outdoor activities that exempts them from public gathering restrictions, but I wonder where we are with understanding the effects of allowing that to happen.

**Michael Russell:** On the first point, the regulations specify that data should be held for 21 days before being securely disposed of. That is absolutely clear. The 21-day period will ensure full cover of the typical incubation period and the additional time during which people may be infectious. I would not expect, and indeed I would not encourage, people to keep that data in the long term, but 21 days is specified.

On the effect of outdoor events, that is not something that I have heard considerable discussion about. There is an expectation that outdoor events are much less concerning in relation to the spread of the virus. We see that, for example, from the Glasgow situation, where the evidence is about indoor transmission in households, not outdoor transmission, so it is indoor activities that are ceasing. Similarly, indoor visiting for care homes and hospitals is the issue. As far as the outdoors is concerned, there is less concern. That is not to say that we would wish to encourage large-scale events—those are still not permitted. We would want to make sure that there was full social distancing and that people were observing social distancing out of doors. However, in general terms, if you can do it outdoors, you should do it outdoors.

**The Convener:** There are no further questions from Stewart Stevenson—is that correct?

**Stewart Stevenson:** Correct.

**The Convener:** Liam McArthur is next. Before you ask your question, Liam, can you please declare any relevant interests?

**Liam McArthur (Orkney Islands) (LD):** I have no registrable interests that are relevant to the work of this committee.

**The Convener:** Thank you. You can go ahead with your question now.

10:30

**Liam McArthur:** Congratulations on your appointment, convener. I was going to follow a similar line of questioning with you and develop it a little further. Concerns have been raised with me about the broad-brush approach that is being taken in relation to hospitality and the distancing that can be safely enforced and achieved in restaurants and cafes, for example, which is very different from what can be achieved in pubs. A number of local restaurants and cafes are anxious that the behaviour of either the people who run pubs or the individuals in those pubs may put at risk other businesses in the wider hospitality sector. What work has the Government done in terms of segmenting the different types of business within that sector?

**Michael Russell:** That is a good question, and it is one that we all face from constituents. They may be in one part of the tourism sector and believe that they are able to operate successfully and do not understand why they are not permitted to operate, because they believe that the danger lies in another part of the sector.

There are two issues. One is that we have to make judgments on the basis of what we know, and we know that, if people do not observe social distancing, the risk of transmission is greatly increased. We have stuck with the 2m distance because we believe that that is the right minimum. That has been reduced in the hospitality trade and, of course, in film and television, but people are being asked very clearly to put other precautions in place.

We are also very clear that part of the mitigation is to make sure that people wear face coverings. That is encouraged—and indeed, now mandated—in a huge range of activities. I could go through the full list, but it would take some time—generally, it is in any premises that are open to members of the public for retail sale or hire of goods and services including shops, take-away restaurants, estate agents and beauty parlours. It does not include bars and pubs or certain hospitality premises with table service, because we recognise that wearing face coverings is impossible there, but we ask people to put other precautions in place. I know that there have been some complaints about music and that people have been saying that it should continue to be played in some premises, but we are trying to discourage people from—[Inaudible.]—to each other.

As far as the regulations are concerned the approach has to be broad brush, and that has to

be the case for understanding the regulations. If we get into detail and start saying that one tiny subsection is fine but another is not, there will be confusion and a lack of observation. I am very conscious, being at this committee for the ninth occasion now to talk about amendments to regulations, that I am desperately keen not to make them too complicated, so that people understand what they have to do.

It has to be a simple message. We are saying that face coverings have to be worn in all those circumstances in which they should be worn and that 2m distancing is the rule and should be the rule everywhere, with very few exceptions. That is tough, and I accept that many businesses find it very difficult, but the only way to secure long-term recovery is to make sure that we are able to move on from where we are now. To do that, to be fair, we have to do better than we are doing presently, because we still have problems.

**Liam McArthur:** You talked earlier about the responsibility that is now on owners of pubs and restaurants to gather data on their clientele. Flipping that around, in terms of what they can expect, have any lessons been drawn from the experience in Aberdeen? I know that a number of the pub owners whose premises were named in the list that was published expressed frustration and anger that the first they knew of their involvement was from that publication. Where there is an outbreak and the Government or local authorities need to publish information, what is your understanding of what businesses can expect in terms of their right to be informed first, not least in terms of managing their relationships with their customers?

**Michael Russell:** [*Inaudible.*]—and no one is stigmatising any premises or organisation, but their business needs must be balanced with public health needs and the need to suppress the virus. If the information can be provided only to public health officials—to contact tracers—it is privileged and can be used solely for that purpose.

However, the position is different if individuals have been to those premises and they need to find others who have been there but the records are incomplete. We must remember that, in the Aberdeen outbreak, we were dealing with circumstances before recording contact details was mandatory—certainly, it was before it was underpinned by regulations. In such circumstances, if clear records have not been kept we need to be able to say that if people were in those premises they should contact the health services.

I would have hoped—and I am sure that it is true—that there is a sensitivity to both business and public health needs and that those involved are always balancing those, but, if there has to be

a choice between them, the public health need will have to triumph in the end. That will mean saying, “We need to know who was here.” I hope that, through the regulations, we are creating the circumstances in which that will be automatic: we will know who was there, because we will have a complete and comprehensive list of all the customers. That is now mandatory—the regulations now say that it has to happen. That will help premises to be prepared.

**Liam McArthur:** I absolutely accept the primacy of the public health need. The anxiety that has been expressed in relation to the situation in Aberdeen does not cut across that at all. My point was more that it is not unreasonable to expect that the owner of any premises that has been caught up in it would be contacted ahead of the information being put into the public domain—which, quite rightly, had to be done, for the reasons that you have suggested.

**Michael Russell:** [*Inaudible.*]

**Liam McArthur:** Cabinet secretary, in your opening remarks you indicated that a number of powers had not yet been commenced and that others had been commenced but had not yet been put into practice, presumably because the need for that has not yet arisen. Could you exemplify those instances? Will you also say whether we should expect some in the latter category to be put into practice in the coming days or weeks?

**Michael Russell:** That is an important issue. It is also a complex one, because we are now dealing with a wide range of powers both in relation to the legislative consent motion on the United Kingdom act and in the two Scottish acts. We are now considering those powers and asking which of them have or have not been used—we could go through them and say which are which—and we are considering those that have not been used but that we might still need, as well as those that we think we no longer need. To add a further slight complication, we could ask whether there are any powers that we think we might need and that we want to hold on to but that we will just suspend for a period of time. We have categorised those in our report, which lists each power in some detail. We are now considering what we need to do next on those.

On the question of which powers we have been either using or not using, I give the example of the emergency registration of nurses and healthcare professionals. We needed to have a power for that—it needed to happen; therefore we went out and did it. It came out of the UK Government’s Coronavirus Act 2020. We needed such registration to take place, so we needed to have that power. We also needed to have emergency arrangements for medical practitioners and for the

temporary registration of social workers. We put powers for all those matters into place.

However, other powers just have not been used. Again pointing to the UK legislation, I give the example of the power on temporary modification of the mental health legislation, which has been controversial. That power has not been used, but it will not be wound back in because it might still be used.

Our report indicates, for each area, which powers have or have not been used. We have also indicated, by means of the secondary legislation that has been laid, the powers that we do not wish to continue and that will be taken out of the renewal process when it comes, provided that the Parliament agrees. There are also two instances of powers that we want to suspend, and our reasons for doing so have also been made clear in the secondary legislation.

**Annabelle Ewing:** Let us return to the issue of the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 11) Regulations 2020 and the collection of contact details of customers by premises that are providing hospitality. The data retention issues have already been addressed, so it would be helpful to receive clarity on the impact of the general data protection regulations regarding the provision. It would also be useful to hear the cabinet secretary remind us that the data is to be securely disposed of after 21 days. Of course, it is what the collector can do with that information in the interim that remains the issue.

My constituent raised with me the scenario of a hospitality provider offering only the option of a smartphone app approach to the collection of data and the customer concerned not having a smartphone. I presume that the business should also be offering alternatives such as pen and paper, albeit that the pen raises sanitation issues, and so forth. I presume that that should also be an option.

Another constituent raised a different issue with me. If they go somewhere and they see that the regulations are not being complied with, whom do they report that to? Is it the local authority or is it the police? Perhaps the cabinet secretary could clarify those two issues.

**Michael Russell:** They report it to the police, and it would do no harm to report it to the local authority, too. The police and the local authority are both required to have jurisdiction in such matters, and the police can impose a fine for people not doing so. That should be what happens. It is important—it is not an optional extra. It is important that information is recorded for test and protect.

The regulations do not mandate how such information should be recorded, nor should they. If any business says that it can do it only on a certain type of smartphone or whatever, that is not possible. The business should collect the information in a way that gives it the ability to find the key person. If the information is for a group of two people—a household or whatever—it should relate to the key person and the business should make sure that it can find that information.

Let us always go back to the primary purpose of this, which is to make sure that, when somebody is tracing an individual's contacts, they can trace them wherever that individual has been, such as on licensed premises, in a restaurant, or whatever. That is very important, as is tracing them in households and elsewhere. That is why that information is being recorded.

On misuse of the data, the regulation is very clear. There is only one legitimate use of the data, which is that it is to be provided to public health officials. There is no other legitimate use for that data. That should be absolutely clear.

I do not know whether Rebecca Whyte wants to add anything to that, but I think that the situation is pretty clear.

**Rebecca Whyte:** As the cabinet secretary has said, there is a fine associated with not following the restrictions that are set out in the regulations. I also highlight the role of local authority environmental health officers and other professionals in monitoring particularly the business aspects of the regulations. As I understand it, they are following up any reports that they receive from members of the public about non-compliance. If constituents are particularly concerned about an individual premises, local authorities now have additional powers on compliance for individual premises, as the cabinet secretary has said, so if there is a particular problem in a particular location, they can take action to remedy it. I emphasise that there are different routes that a concerned constituent could take in relation to premises that do not appear to be following the system properly.

**Annabelle Ewing:** On a wider issue, in his opening statement, the cabinet secretary referred to proposals to extend the emergency underlying legislation, or many provisions of it, to 31 March 2021. On that basis, is there any expectation that we could be moving to phase 4 of the route map any time soon?

10:45

**Michael Russell:** The First Minister has made it clear that the phase that we are in—phase 3—is expected to last for some time. I do not think that I can be any more specific than that. We entered

phase 3 on 9 July and we are still in phase 3. I do not anticipate our moving on to another phase. Entering phase 4 will mean that the virus has been suppressed and is no longer a public health emergency, and we are not at that stage—that is obvious. My expectation is that a move to stage 4 is not imminent.

**Maurice Corry:** I congratulate Donald Cameron on being elected as convener of the committee—well done.

What proactive checks are being made on venues to ensure that the information that is gathered is being used and stored correctly and that the way in which that is being done conforms to the general data protection regulation? My question follows on from the one that Annabelle Ewing asked but is more specific. I think that a proactive approach needs to be taken, to ensure that that information is not misused.

**Michael Russell:** As a former local authority councillor, Mr Corry will know that local authorities do not have unlimited resources to inspect premises, even if they wish to do so. That is undoubtedly true in Argyll and Bute, as he knows.

I would not expect local authority staff to visit licensed premises every day or every week, but I would expect them to be proactive. I have regular conversations with the council chief executive in my area, and I know that other people do the same. I would expect councils not only to be vigilant but to be helpful and to respond to requests for information. I would expect them to be attentive to members of the public who are concerned about the issue, because members of the public have a role to play here.

As citizens, we all have a role to play in making sure that the coronavirus regulations are observed. It is for our own good that they exist, and we want to ensure that they are effective, so that the period that we are going through does not last a moment longer than it has to. I expect everybody to play their role in the process, including the police. The police have been very good in taking the four Es approach to all enforcement. There is no reason why the regulations in question could not be observed properly, given the amount of support and guidance that is being provided to ensure that premises can do so. The message that observing the regulations is not optional needs to get out to licensed premises.

**Maurice Corry:** The emphasis is on the local authorities being proactive about implementation. What provision has the Scottish Government made under the Covid regulations to provide extra funding for the extra vigilance that will be required if councils' environmental health officers are to be more proactive in putting the checks in place?

**Michael Russell:** As you are aware, there is a continuing dialogue on local authority funding. There has been a dialogue on local authority funding since local authorities existed—indeed, there has probably been such a dialogue since before they existed—and that dialogue will continue in the context of the present issues. I am quite sure that, if local authorities need additional resource and help, they will want to make that point.

Environmental health officers are under enormous pressure as a result of the much unwanted Brexit process, which involves additional inspections of seafood. There are big pressures, and we will do our best to help with those for which we are responsible; I hope that others will help with the pressures for which they are responsible.

**Maurice Corry:** I have a question about freedom of information, which is for Mr Hendricks.

What plans are in place for continuous training of the Scottish Government's FOI staff?

**Gerry Hendricks:** As I mentioned earlier, as part of the intervention with the commissioner, we trained almost 300 case handlers to deal with FOI requests. As I noted, some of them have moved on to deal with Covid work. We have run two test events with staff in our health directorates to take them through case handling. That involved taking them through each step that is required in dealing with an FOI request. We have taken feedback from the people involved in that, and we plan to roll that out to staff more widely in the coming months.

That is the initial step that we have taken to get us through the current situation. Once we get back to some kind of normality, we will look to reinstate all the measures that we had put in place with our improvement project and to take that forward again.

**The Convener:** Thank you for that. The next set of questions will come from Alison Johnstone. Alison, before you ask your questions, I invite you to declare any relevant interests.

**Alison Johnstone (Lothian) (Green):** I have no relevant interests to declare, convener. Congratulations on your convenership.

**The Convener:** Thank you.

**Alison Johnstone:** Cabinet secretary, the list of exempt countries is changing frequently, for wholly understandable reasons, and at the same time we are expecting the arrival of international students in Scotland and in the UK more widely. I would like to understand whether any discussion is taking place in the Government about potential testing on the disembarking of such students.

**Michael Russell:** I think that the guidance on universities and their resumption was published yesterday. I will have to undertake to send it to the member, if she has not already seen it, because I do not have it to hand. However, I know that it was published and that, for example, reliance on quarantine is part of that guidance for international students.

The universities and colleges have been deeply involved in drawing up the guidance, which is detailed. I think that the best thing that we can do is to make sure that you have the guidance. The minister who is responsible for it is Richard Lochhead, and the committee might want to talk to him once you have examined it.

**Alison Johnstone:** I appreciate that, cabinet secretary. With regard to the current situation in Glasgow and the west of Scotland, do you feel that the issue of the transmission of the virus within small household groups is being aired to the extent that it should be? Is there an understanding among the general public that small household groups can be an issue? Is there enough focus on that, or is it still felt that only large groups are an issue?

**Michael Russell:** I think that the issue will be clear to the people of West Dunbartonshire, East Renfrewshire and Glasgow today. In the epidemiologists' view, that is a significant cause of the clusters and the rate of infection that appear to have built in recent days, and measures are being taken because of that. I think that that is being driven home. I hope that it is also being driven home that it is irresponsible for larger groups to meet together, whether they involve younger people or older people. We can see that worldwide.

As I have said to the committee before, we are in a constantly changing set of circumstances, and it is necessary to adapt to them and change. That is why we have talked about 13 sets of amendments to the regulations, and they are still coming. We have had to be fleet of foot and look at different circumstances. We had the announcement yesterday, and, no doubt, the First Minister will also talk about the subject today.

Consideration has been given to the role of pubs, for example, and some people who have commented have said, "Why am I not allowed to meet indoors, yet I can go to a pub?" However, different regulations and different precautions are in place in pubs, which are externally verified. It is very hard to have precautions externally verified and observed if people are meeting in one another's houses. That is a very different set of circumstances. It is important to bring home to people how important that is. We cannot act on it in the way we can in the case of pubs and restaurants, so we have to bring it home to people.

The more we do that, the better, and I think that asking the question is a helpful part of that, because it means that we can discuss and debate it.

**Alison Johnstone:** Earlier in your evidence this morning, you spoke about the need for simple public health messaging that is clear and easy to understand. I absolutely appreciate that. However, we have constituents writing to us, and the committee has received correspondence on, for example, why swimming pools were closed for a specific time. We have received views from constituents and others who are perhaps at a level that is just below that of elite competitor but who still take part in performance squads and so on, and they feel that they have been treated as general or recreational swimmers.

There is a tension between the need for simple, clear messaging and the need for absolute transparency as to how decisions have been reached. The Minister for Public Health, Sport and Wellbeing explained that the framework for decision making was responsible for the way in which the decision was arrived at, but that does not necessarily help people to understand fully. Can we do anything to help ensure that people really understand why certain decisions have been taken?

**Michael Russell:** It is difficult. There is a matrix for decision making—it is not as simple as putting one concern or activity in one place and another one next to it, and asking, "Why can we do one and not the other?"

We need to understand two things. First, in addition to the other differences between pubs and private households, which I highlighted, there are different levels of external verification and regulation that can be undertaken to check on things. That is possible in some places, whereas it cannot be done in another type of place.

Secondly, the cumulative effect needs to be understood. The objective is to keep the number of infections as low as possible and stop community transmission of the virus. It is not simply a matter of saying that one activity will increase transmission by a certain amount; we have to look at a mix of activities. For example, we need to look at things that we have already done and consider whether, by adding something else to the list, we will make the situation worse. Has what we have already done been absorbed into the system, which would allow us to add something else to the list?

It is not as simple as saying, "This is the outcome." It is about the cumulative outcome—a mix of outcomes—and the level of regulation. The complexity of that is frustrating. How we boil that down into simple messaging, with dos and don'ts,

and how we ensure that people have confidence in those messages, is a key issue.

One of the issues is transparency. I have quoted previously in this committee a book on the 1918 Spanish flu by an American scholar—it is very much worth reading—who comes to the conclusion that those who dealt best with the flu a century ago did so on the basis of transparency and transparent government, and those who dealt worst with it were those who did not see the importance of good governance in such matters. That is a very important lesson, but it is not easy to apply—in particular, when we are dealing with the complexities of modern legislation. We all have to do our best, which is part of it, but we also sometimes have to ask people to trust us when we say that we have thought things through very carefully.

I have a number of swimming pools in my constituency that have been very concerned about the rules. For example, the community pool in Lochgilphead, which does fantastic work, was very concerned that it could not open; I am delighted that it is now able to do so. We had to look at the balance of risk in that regard, not just at the fact that the people who run that pool would have done everything to the letter. It is about the balance of risk across society.

**Alison Johnstone:** I very much appreciate that response, and I appreciate the Scottish Government's efforts to update people regularly. I just want to ensure that transparency in communication is very much a focal point, as it is very important in our continuing efforts to tackle the pandemic.

**Shona Robison (Dundee City East) (SNP):** Good morning. I, too, welcome the new convener to the committee.

I turn to an issue that the cabinet secretary mentioned in his opening remarks: information on domestic abuse. Both coronavirus acts place a number of requirements on the Scottish ministers, including a requirement to

“take account of any information about the nature and number of incidents”

and a requirement to

“explain in the report ... how the information was taken account of.”

Are you able to tell us what positive impact the placing of those requirements on Scottish ministers has had on victims of domestic abuse? We touched on that issue briefly with the chief constable at the Justice Committee, but it would be helpful to get your view. Overall, what has the legislation meant for those who have been a concern for us all not only during lockdown but as

we come out of lockdown and restrictions are eased?

11:00

**Michael Russell:** I will make two points. The figures indicate that there has been a rise in the number of incidents of domestic abuse. The figures in the report cover the period from April to June, when it appears that there was a rise of possibly 9 per cent. It is difficult to know, however, because there are different figures that say different things. We have just had the statistics for July, so we can now talk about them. The number of incidents again appears to be around 9 per cent higher, so it is clear that there has been, regrettably, a rise in the level of domestic abuse. The question is what can be, and is being, done.

The chief constable indicated, among other things, the focus of the police force on domestic abuse. I have talked to senior police officers who have indicated that being aware of domestic abuse is the first step towards acting on it. There has been messaging on those issues, and support has been provided to agencies that deal with domestic abuse. However, we now need to move on from that. Now that we can see what the figures are, it will be up to ministers—the justice ministers, in particular—to address the issue by bringing forward further action that they think is required. I hope that they will do so.

**Shona Robison:** Are you saying that ministers are continuing to discuss what more needs to be done? Further restrictions are being imposed in some places, as we have seen in the west of Scotland, and there is a sense that more domestic abuse victims are hidden, which is clearly of deep concern to us all. The rise in the figures that you highlighted is hugely concerning. Are you able to give a commitment to write to the committee once those further actions have been agreed? I would like more information on that.

Is there a role for MSPs, in our constituencies, in promoting information and help for people in a variety of ways? Can we amplify the message that the Government and the agencies are putting out?

**Michael Russell:** [*Inaudible.*]—for members of the Scottish Parliament to be active on those matters. I can ask my colleagues in the justice portfolio to look at what you have said and to ensure that they come back to you and to the committee with the information that you are looking for, honouring not just the first part of the commitment that you seek, which is to provide information, but the second part in respect of what that information leads to. I am happy to ask them to do that.

**The Convener:** Finally, we come to Willie Coffey.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Thank you, convener, and welcome to the committee.

Cabinet secretary, I have a couple of questions to clarify a number of issues that have arisen in my constituency. The first concerns the legislation covering the protection of tenancies. I am hearing that some people who rent a property are being given notice by their landlords. It is nothing to do with rent arrears, antisocial behaviour or anything like that. Can you clarify whether the six-months provision is still in force and whether it covers all circumstances in which a landlord would wish to remove a tenant from a property?

**Michael Russell:** The provision covers evictions that are not connected to antisocial behaviour. We have to recognise that there will still, regrettably, be people who are guilty of antisocial behaviour and who, to be frank, make their neighbours' lives hell. In the end, we should not allow that to take place. However, nobody should be being threatened with eviction or have the threat of eviction hanging over them because they are unable to pay the rent.

The coronavirus is clearly a major circumstance, so the six-months period has been extended and a range of other provisions have been added. For example, a new hardship fund has been set up, and the Minister for Local Government, Housing and Planning made a series of announcements yesterday about what has been proposed. We cannot vary the details of the renewal; we can only renew, not renew or suspend. However, he has brought forward additional things that will be part of the process.

There should not be evictions at this stage of people who are unable to pay the rent. The coronavirus is clearly serious, and we do not want people to be homeless as a result of it.

**Willie Coffey:** I clarify that those people are paying rent. There are no unusual circumstances, but they are being given six weeks' notice to quit.

**Michael Russell:** I suggest that you raise that as a constituency issue with the housing minister as a matter of urgency. I am sure that he will respond.

**Willie Coffey:** My second question is about the reports that we are, unfortunately, hearing in Ayrshire of a person who may have wilfully and knowingly gone out into the community when they had the virus. That has potentially been the cause of the virus spreading and of what the Ayrshire media are calling a "supercluster". What powers do we have to deal with any individual who wilfully and glaringly ignores the advice and guidance that have been given and who continues to go out into the community knowing that they may have—or, indeed, that they have—the virus?

**Michael Russell:** The police have the power to detain an individual and return them to their home. I am not familiar with the case, but there is no doubt about that. I am sure that the police would also consider other issues, such as whether it was a malicious act.

Very early on, the Lord Advocate indicated that people who spat at police officers and said that they had the coronavirus would be treated very severely. I would have thought that the police and the public health authorities would want to ensure that somebody who has the virus and is flouting the absolute requirement to isolate is not treated with equanimity. That would have to be seen as a safeguard.

**Willie Coffey:** My last question is about the wedding industry. The current restriction is that only 20 persons are able to attend a wedding, but the likely size of a wedding party can be up to 10, which leaves the possibility of only a very small number of guests. Is there any thought of extending that number, even a little, to help the industries that support the wedding industry—the kilt hire industry and so on? Is it even possible that people who wished to proceed with a wedding could have tests done in advance, to give some assurance that the people who were attending the event were safe to attend it?

**Michael Russell:** I know how upsetting and annoying the situation is, and I regret that it exists. On the positive side, the First Minister has said that she will keep the matter under review, and it continues to be kept under review.

The wedding trade is in discussion with the authorities about how it might go about expanding what it does, but it is important to recognise that weddings are pretty ideal sets of circumstances for the virus to spread in. At weddings and other big events, such as funerals and wakes, people are emotional and it is difficult to enforce social distancing. That can be done in a pub or a restaurant, but it is harder to do that at a party. It simply is not wise at this stage to add that difficulty to the range of difficulties that exist.

The matter is being kept under review. Nobody wants it to be so. We have addressed a whole range of issues around gyms, swimming pools—*[Inaudible.]* People feel badly done by and that they should be allowed to do what they want to do. I fully understand that. Individual members will hear that from people. Nevertheless, such decisions are not taken lightly or in an ill-considered fashion, and they are kept under constant review. There is a strong fear that what is already a very fragile set of circumstances—as we see from the situation in Glasgow and the west of Scotland today—will be added to, and I think that it is wiser not to take risks.



**The Convener:** I thank all my colleagues very much, and I thank the cabinet secretary and his officials for their evidence.

We have been contacted by the official report, which says that it is missing the first couple of words of each question and answer. Although we have now finished the questions, I remind everybody to pause for a few seconds before they ask a question or give an answer. That would be greatly appreciated.

Under agenda item 4, we will consider the motions on the subordinate legislation on which we have taken evidence.

Are members content that motions S5M-22427 and S5M-22517 be moved en bloc? If any member is not content with that approach, they should please type “N” in the chat bar now.

Members agree that motions S5M-22427 and S5M-22517 should be moved en bloc, so I invite the cabinet secretary to do so.

*Motions moved,*

That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.11) Regulations 2020 (SSI 2020/241) be approved.

That the Covid-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.12) Regulations (SSI 2020/251) be approved.—[*Michael Russell*]

*Motions agreed to.*

**The Convener:** I again thank the cabinet secretary and his officials for attending the meeting. In the coming days, the committee will publish a report to the Parliament that sets out our decision on the statutory instruments.

*Meeting closed at 11:12.*



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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