



OFFICIAL REPORT
AITHISG OIFIGEIL

Finance and Constitution Committee

Tuesday 24 March 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 24 March 2020

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FINANCE AND CONSTITUTION COMMITTEE

9th Meeting 2020, Session 5

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

George Adam (Paisley) (SNP)

Tom Arthur (Renfrewshire South) (SNP)

Neil Bibby (West Scotland) (Lab)

Alexander Burnett (Aberdeenshire West) (Con)

Donald Cameron (Highlands and Islands) (Con)

*Angela Constance (Almond Valley) (SNP)

*Patrick Harvie (Glasgow) (Green)

John Mason (Glasgow Shettleston) (SNP)

*Alex Rowley (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ben Macpherson (Minister for Public Finance and Migration)

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

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Finance and Constitution Committee

Tuesday 24 March 2020

[The Convener opened the meeting at 10:31]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning and welcome to the ninth meeting in 2020 of the Finance and Constitution Committee. The committee has agreed that, given Government guidance on social distancing, only five members are attending today, on a cross-party basis. Therefore, Donald Cameron, Alexander Burnett, Neil Bibby, George Adam, John Mason and Tom Arthur have sent their apologies.

Agenda item 1 is a decision on whether to take item 3 in private. The committee has now agreed that we will take that item in public, so we will go straight to the next item.

Coronavirus Bill

10:32

The Convener: We live in remarkable times, and the second item on our agenda is to take evidence on the legislative consent memorandum to the Coronavirus Bill, which is United Kingdom Parliament legislation, from Michael Russell, the Cabinet Secretary for the Constitution, Europe and External Affairs. He is joined by Jenny Brough, who is the European Union exit readiness team leader. I am not sure what that title has to do with the coronavirus—*[Laughter]*—but I welcome you to the meeting.

We have a grave national emergency, cabinet secretary. I invite you to make a short opening statement.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): It will be very short, because the detail of the legislation is clear and is before you.

As you say, convener, we are living in extraordinarily difficult times, which many people are finding very difficult to cope with. The new regulations announced last night are of exceptional importance. I say to people: the intention of the legislation is to keep you, your communities and your country safe, and to make sure that we work our way through this as best as we possibly can.

The bill is UK-wide, but there are specific Scottish items, which I hope will be approved today in committee and later today in the chamber. We will be bringing forward further legislation very shortly—next week, I anticipate—to take more measures, and no doubt we can discuss them at that point. The bill is designed to help, as will be everything that we do.

The Convener: Thank you, cabinet secretary. I should have said to our witnesses that, when I call you to speak, you should wait a moment to allow the microphones to light up in front of you.

Cabinet secretary, some reports this morning have suggested that firms such as Sports Direct were considering staying open. I understand that the decision has now been reversed for Sports Direct, which is good, but that leads me to a question about the powers in the bill. Will the Scottish Government have powers to close down premises which are not considered essential but which decide to stay open? How quickly can that be done?

This is a very fast-developing situation, and there is confusion in some quarters about what constitutes essential business or essential travel. I understand that the First Minister may well make a

statement this afternoon. As well as answering my first couple of questions, can you give us any guidance at this stage on that matter? It is causing significant concern to a great number of constituents.

Michael Russell: It is. All of us will have received substantial amounts of email and other contact over the past few days, and that will continue.

I will take the question in three separate parts. First, clause 50 and schedule 21 of the bill as introduced in the UK Parliament give powers to ministers to give directions relating to events, gatherings and premises, and clause 47 and schedule 18 give ministers powers to make health protection regulations. Other parts of the bill do different things, including providing for the closure of schools, educational institutions and childcare premises. However, there are powers in the bill to enforce the regulations that were discussed and were notified last night, and they will be used if they are required. Obviously, we would much prefer that people took this situation with the utmost seriousness and followed the rules—as the First Minister has said—to the letter.

Of course, interpretation is difficult. This is a fast-changing and emerging situation. The Scottish Government will publish further information on the issues of essential premises and key workers, but it is essential that people apply the maximum of common sense to this.

I will give you some examples of where common sense should be applied. Clearly, the Sports Direct situation is one in relation to which there was a strong public feeling, expressed publicly, that those stores should not remain open. People recognised that, no matter what the company was saying, that was not an appropriate thing to happen. The same thing happened this weekend in relation to pubs and licensed premises, with many people expressing their strong feeling that they should not remain open.

All of us will have had contacts from companies in our constituencies—I have also been contacted by national bodies—that want all of their workers recognised as key workers. In reality, if that were to be the case, the regulations would mean nothing.

Yesterday, I was approached by the national newspaper publishers—I am sure that they would not mind me saying so. Clearly, there are certain things in their work that are essential in the dissemination of information: people will have to be involved in the process of writing, printing and distributing newspapers. However, those people are by no means all the people who work for those newspapers. In fact, looking closely at the issue, the publishers reckoned that probably a quite

small percentage of their workforce engage is engaged in that.

If you can do your job from home, do your job from home. If employers bust a gut in order to ensure that people can do their jobs from home, that will be very helpful. Where there are circumstances in which people require to go out, for the national or local good, that will, of course, be permitted.

At the present moment, people should use common sense. They should look for guidance online or elsewhere—we will try to get that guidance online as quickly as possible—but they should also remember the purpose of these regulations, which is to keep people safe and ensure that we cut social interactions between people by 75 per cent or more. That will not happen if people think that they can just carry on as usual. They cannot.

The Convener: I will raise an example of a situation in which there is some confusion. I will then invite others to ask other questions, and I might come back to other points that I want to raise nearer the end of the meeting.

It was clear from what the First Minister said last night that the Government does not expect the construction industry to continue to operate in these circumstances, although, of course, there are some bits of work that are essential to the national good and safety. However, the First Minister's message seemed to be contradicted on the radio this morning by some commentators in the UK Government. There is confusion out there. How can we avoid that?

Michael Russell: It is important that the messages from all four Governments are co-ordinated and that we are saying the same thing. Clearly, there is a difference between the two messages that you mention. I have just come from a telephone call into the Cabinet meeting—the Cabinet did not meet as a group as it normally does; many of us were participating by phone. The issue that you raise was mentioned, and we are endeavouring to clarify it today at speed, so that we can make the situation clear to people.

The Convener: Murdo Fraser has a couple of follow-up questions.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning, cabinet secretary. There are two distinct but related issues here. Who is a key worker? That is a crucial question, particularly from the point of view of childcare and whose children should be at school. To me, the Government guidance on that is clear. However, as you have already alluded to, I understand that there are sectors who believe that they should be in that group but are not. Is the Government

reflecting on that? Will further be guidance be issued or is that set?

The second issue concerns the announcements that were made last night by the Prime Minister and the First Minister about who should be going to work. There is still a bit of confusion and concern in people's minds about that. It is clear that people should work from home if they can. If they cannot and their businesses are still operating, should they go to work or not? That is the question in many people's minds.

Michael Russell: On key workers, the definition that the Government has been involved with until now has been to do with childcare, as you mentioned. The Government is clear on that. However, obviously, there are other workers who will require to do things. For example, the normal parts of the food chain need to operate, although probably not everybody who is involved in it needs to do their job. At the weekend, I dealt with a company that delivers feedstuffs. Clearly, the people who deliver feedstuffs are essential, but those who take the orders can do that from home. There are distinctions to be made—it is not a blanket approach.

On the definitions that now apply in relation to going out to work, because this situation is unprecedented, it will of course take a bit of time to get those definitions absolutely clear, but I ask people to apply common sense. The first element of common sense is for people to consider whether they need to go out or can work from home. The second element is for employers, who need to think creatively about how much of the work can be done from home, even if it is essential, and to reconfigure work patterns so that that can happen.

We are all working from our experience. Yesterday, I had an email from someone in a senior position whose employer said that they had to come to work. That employer changed its view during the day, because it began to work out how the job could be done from somewhere else. Technology is working well for people—a lot of people are having online meetings and working from home. That needs to continue.

The Convener: I think that you had a question about food supplies, Murdo.

Murdo Fraser: Do you want me to come on to that later?

The Convener: Just do it now.

Murdo Fraser: Okay—thank you.

I want to ask about food supply, which is crucial. We have seen lots of pictures of supermarket shelves that are empty because people are irresponsibly panic buying. That is causing concern, particularly for vulnerable groups and

those who are not willing to go out of the house. In the area that I represent, many community volunteers have come forward and are prepared to help others, which is welcome. How confident is the Scottish Government that it can work with the UK Government and the other devolved Administrations to ensure that the food supply is maintained and that there is enough capacity for food production now and in future to ensure that we do not face any difficulties?

The Convener: Also, what additional powers are in the bill that can help the Government to secure that?

Michael Russell: There is confidence that the food supply can be maintained. People need to recognise that they should not be panic buying or crowding into shops. The information that was published last night contained a clear plea to supermarkets to manage the people who come in, to maintain social distancing and to have orderly queueing in order to ensure that people are safe in those circumstances. Provided that supermarkets do that and that people behave rationally, there should be no difficulty in that regard. Supermarkets in some other European countries are in fact doing better than that at present, and we should ensure that we do as well as possible.

The list of shops that can remain open has been published and is clear. People can get supplies from their local corner shop. Mr Fraser and I will have many people write to us who come from rural villages where there is only one source of supply. Local shopkeepers will perhaps want to beef up that supply—I know that that is happening in some places in Argyll, where local shops that normally have a limited range are trying to carry essential supplies so that people do not have to travel.

Clauses 23 to 27 of the bill as introduced relate to the food supply chain and are primarily to ensure that there are legislative powers that can be applied if information is required from individuals in order to make the food chain work properly or to ensure that difficulties in the food chain can be assessed.

Today, I have heard from the Scottish Grocers Federation that food supplies are being maintained—some members might have heard that, too. Officials here and elsewhere are doing a lot of work to ensure that food is coming through to the ends of the food supply chain, which are often in Scotland. We did a lot of planning for that during the two periods when we thought that there might be a no-deal exit from the European Union, so some of that work has already been done, and more is being done.

Murdo Fraser: Agriculture is also an issue in the area that I represent. At this time of year, many of those who are involved in the production

of soft fruit would be looking to plant with a view to harvesting in the summer. Their difficulty is with the availability of labour to pick the fruit. The migrant labour that they would normally depend on is not available, so they are actively recruiting. Is there anything in the legislation, such as the employment regulations, that will help and could encourage people to go and work in that sector? The farmers are saying that there is no point in planting crops if they do not know that there will be people there to pick the fruit in July and August.

10:45

Michael Russell: I encourage them to plant. The situation would be worse if they did not and there was then no crop to be picked. Planting is essential.

The legislation does not have provisions on that, but we are at the start of the legislative process, not the conclusion. As I have indicated, there will be at least one bill next week and there will undoubtedly be a further bill during April. We will continue to make sure that all the temporary legislative change is undertaken with scrutiny and with effect, so that we can help people. Issues will arise out of the harvest and they will have to be addressed.

The Convener: I do not expect you to respond to this, cabinet secretary; it is just something you might want to take away. I am also aware that some of the same people that Murdo Fraser is talking about will be working in polytunnels. What will be the health advice to them? Many of them also live in caravans, for want of a better word, on site, and they are concerned about how many people can use them and so on. I am not expecting a response to that just now, but guidance will be required.

Michael Russell: We will take the issue away for consideration.

Alex Rowley (Mid Scotland and Fife) (Lab): This is a massive shift of power over individuals, but I thank the cabinet secretary for the discussions that we have had. He has been willing to work with all parties to explain the bill, which has been improved by the Scottish Government's input. I want to put that on the record.

There seems to be some confusion about key workers. We have heard that 32 local authorities are defining what key workers are, so I would be grateful if you could address that. It is resulting in confusion.

I am also wondering about the role of the employer. During the weekend, I heard different examples. Yesterday, I was contacted by somebody who works in a gym. Although the gyms have been shut, the staff were being told

they still had to come in because they could be painting and cleaning and so on. That person was obviously frightened about having to use public transport. Employers are still forcing workers to go to their work even though the business is closed. Could you start with that?

Michael Russell: Thank you for your earlier remarks. We will continue to co-operate with all parties across the Parliament and individual spokespeople on this legislation and on the legislation that is planned. As you know, we are hoping to meet later today to look at the legislation that will come next week to make sure that we are all sighted on what might be in it and to get people's views on it.

I am pleased that the UK Government appears to have accepted that this legislation should not last for two years but should be for six months, with a possible six-month renewal. That is very welcome.

I will talk about key workers and local authorities before I deal with employers. The definition applies because it is the definition of key workers who are supplying the childcare and support at local authority hubs. That is what the definition applies to in local authorities. Because local authorities are the providers of that care, they will need to tailor it to the demand in their areas. Some areas, such as Edinburgh, will have a far larger number of intensive care unit staff and doctors than there are in my area. In those circumstances, there must be variation and more flexibility in some areas than there is in others. That is understandable.

The definition is not the abiding definition of key workers that will be used for ever in every set of circumstances. What was published on Friday was clearly about education and childcare.

On employers, I entirely agree with you. This is a good opportunity to say very clearly that employers have a huge responsibility. They should be reconfiguring their expectations of how they do their job in order to make sure that the maximum number of people can work from home. We are not saying that people should not work—we need people to work—but the maximum number of people should be able to work from home. If that requires technological reconfiguration, reconfiguration of expectation or reconfiguration of demand, that should take place. If a gym is closed, clearly, it will not need to be cleaned every single day. Employers need to think very creatively and positively about different patterns of work.

Alex Rowley: You are clear that, if necessary, the Government will use the powers in the bill—and seek additional powers—if employers do not act responsibly? For the majority of people who have contacted me over the past couple days

about employment matters, the key issue is the employer.

Michael Russell: Absolutely. The powers that we have in the bill will be used as they are required, and any powers that we take thereafter will be used as required. This is not window dressing or shadow boxing; this is what we intend to do.

Quite clearly, we hope that the vast majority of people, in recognition of the unprecedented emergency that we are in, will operate in a sensible, thoughtful and constructive matter, but the law exists to force compliance if that does not take place.

Alex Rowley: On the issue of the self-employed, have you made any more representations to the UK Government?

Michael Russell: Yes. There are continuing representations to the UK Government. I think that the indication is that it will be acting on the issue of the self-employed. That will be very welcome.

A lot of self-employed people have been in touch—I am sure that they will have been in touch with every single one of us. Each of us represents areas where there are lots of self-employed people in some sectors. For example, in my area, there are lots of self-employed people in the inshore fisheries sector. It is important that something is done in the fishing sector, and for the self-employed. We continue to say that something must be done. Otherwise, the situation would be inequitable; it would be also be damaging in terms of what people feel that they have to do work-wise.

Alex Rowley: Last Sunday morning, the Tesco in Dunfermline had given notice that, for the first hour of business—I think that it was from 8 until 9—national health service workers would have access to the store. Online, you could see the chaos that occurred, with all the workers were queued together, along with Tesco staff. Given how the virus is passed on, it was utter chaos. People have told me that, once they got into the store, half the shelves were empty. That is not a good idea. Is the Government talking to local authorities about how to organise? We need to stop the panic buying. To have allowed that situation to happen was an insult to those workers.

Michael Russell: There is always a difference been having a good idea and getting that good idea to work in practice. Clearly, it worked very badly in some instances; in other instances, it worked well.

There is clear information today that supermarkets must arrange queueing and make sure that social distancing is observed. It is a very good idea to help not just NHS staff but care staff, including care home staff—I know that there has

been an issue to do with a narrow definition being applied—to give them some priority. However, the shelves need to be full, or at least as full as the supermarkets can get them.

All that needs to be thought through by individual stores and chains of stores. They need to make sure that it works. Not everybody will get it right first time, but people's lives depend on getting it right, so I hope that they will get it right.

Murdo Fraser: I want to return to Alex Rowley's comments about employees getting transportation to work.

I, too, have heard from people doing shift work that, because of the understandable reduction in rail and bus services, they are having difficulty in getting to work on time. That applies as much to key workers, including those in the NHS, as it does to those who work in the private sector. Understandably, the transport companies are saying that they cannot run empty buses, they cannot pay staff and they cannot incur fuel costs if there are no passengers. At the same time, there needs to be a minimum level of transportation service to keep the country functioning—to help those who have to get to work to do so and to help people who do not have cars to get around. What can the Scottish Government do to support the transport companies, to make sure that we have the level of transportation that is required to enable the country to function?

Michael Russell: We are working on that, but it is difficult. The reduction of transportation is essential, partly because the personnel will not be there to allow it and also because we want to make sure that people are working at home. Equally, we are encouraging those people who need to go to work not to use public transport if they can avoid it.

However, some people cannot avoid using public transport. In those circumstances, they have to practise as much social distancing as they can, but that can be difficult when people are trying to travel using the same transport. It will require a lot of trying to organise these things in the best way possible. We have seen pictures of the London tube, which have caused great concern. A lot of work is being done to mitigate such issues as much as possible. The situation is not yet perfect—we have to accept that—but a lot of work is being done to help.

Murdo Fraser: One of the transport companies has suggested to me that continuing the payment for the current concessionary travel scheme, even though people are not using the buses, would help to sustain its business model. Is that being considered?

Michael Russell: I have had representations from big coach and bus companies—one in my

constituency, West Coast Motors, is keeping me very well briefed. I think that the Cabinet Secretary for Transport, Infrastructure and Connectivity is trying to make sure that as much resource as possible is being made available to those companies. School contracts will have come to an end, and people will not be travelling.

There is national support for businesses in Scotland and throughout the UK, but we will also have to make sure that there is a transport sector at the end of this—and there will be an end to this; we must keep our eyes on that. At the end of this, we need to have a transport sector that is capable of getting back to work and is not terminally damaged.

Patrick Harvie: I have a number of separate issues to raise.

It has been reported that the UK Government will table its own amendment to ensure renewal every six months. I welcome the fact that the Scottish Government has been supportive of that change. There has been pressure across the political parties to achieve that.

On the issue of food supplies, as you know, I was a bit surprised that the bill talks only about the provision of information. It seems to me that there is at least potentially the need for public authorities either to acquire food and other essential supplies for public distribution or to ensure price capping to avoid exploitation. Are there relevant powers in that area anywhere else, or could they be implemented in devolved legislation if they are not included in this legislation?

Michael Russell: I think that price capping could not be covered by devolved legislation, because it relates to a reserved power, but I am happy to look into that.

I suspect that the purchase of foodstuffs could be covered in devolved legislation. I do not see any reason why it should not be, although I would want to get a legal opinion on that. I know that you raised the issue last week, and we can certainly look into that to make sure that it would be possible either under existing legislation or under emergency legislation.

I am pretty certain that price capping is a reserved matter, but we will look into it.

Patrick Harvie: You will also be aware that I have expressed some surprise at the fact that the emergency volunteer scheme covers only remuneration of those who have lost earnings by volunteering, not those who have already lost their earnings and are therefore available to take part in the scheme. It seems to me that it would be an entirely reasonable change to ensure that those people who have already lost their earnings can be given reasonable remuneration for taking part

in the scheme. That would meet both their economic need and the country's social need to have those people sign up. Have you been able to explore that with the UK Government at all?

Michael Russell: We have not been able to explore that, because the legislative consent process does not—I think—require us to consent to that particular part of the bill. I would need to check that. I am sorry but, as you know, we only saw the bill in its entirety less than a week ago.

Patrick Harvie: Indeed.

Michael Russell: I think that we are not required to consent to that part of the bill, but we should probably see what we can do in relation to what you have identified and see where we can go from there. I have just checked, and clause 7 of the bill as introduced is not subject to a legislative consent procedure.

11:00

Patrick Harvie: I understand that it is not subject to the consent procedure, but there is dialogue on the matter between the two Governments.

Michael Russell: I am unaware of dialogue on the issue. I will try to find out whether there has been dialogue and whether we can make a suggestion or modify the provision through our own legislation. It is often difficult to do that with UK legislation, but I will find out.

Patrick Harvie: Another area that does not require consent, because it applies only to England and Wales, is schedule 29, on evictions. Does the Scottish Government intend to replicate the provisions that will apply to England and Wales—in effect, a ban on evictions—in Scotland? The policy so far has been merely to extend, from three months to six months, the period over which rent arrears can accrue, and that would not protect people from being given notice to quit.

Almost every day, I get emails from people saying that they have been given notice to quit by their landlords. I have no doubt that there are some responsible landlords, but there are others who are not responsible. It is urgent that the Scottish Government takes measures to protect private rented tenants from eviction under any circumstances during the crisis.

Michael Russell: We believe that there is a de facto prevention of eviction at the moment, but we could also deal with the matter in our own legislation. There has been an announcement that we will change the mandatory eviction ground from three months to six months. I believe that you will be represented at the meeting that we will have later today about emergency legislation,

when we can raise that issue with the appropriate minister.

Patrick Harvie (Glasgow) (Green): Thank you. There is another reserved matter that will play out in Scotland in a way that will impact public health. There are significant detention powers in relation to the immigration system and asylum seekers, and some people will still be concerned that they could be subject to deportation even if that is an unsafe process for them to go through.

There have been long-standing concerns about the attitude of the previous asylum accommodation contract holder, Serco, and the new contract holder, Mears Group, carrying out lock-change evictions of residents in Glasgow and those tenants subsequently having no recourse to public funds. I think that the Scottish Government has said that emergency accommodation will be available to those with no recourse to public funds. Is the Scottish Government engaged with the UK Government on the question of suspending detentions, deportations and evictions of people in those circumstances?

Michael Russell: Our view is that that should not happen and that there should be a suspension of such matters during this period. That view has been, and will be, communicated. It is our view and we encourage others to take it.

Patrick Harvie: Has there been a response?

Michael Russell: I am not aware of one, but we will try to find out what the situation is.

Patrick Harvie: That would be very helpful.

Complex legislation always brings the risk of unintended consequences. That risk may be greater with emergency legislation. I do not doubt the sincere intentions with which the bill has been introduced, but we have had a written submission from the Commissioner for Children and Young People, who is concerned about potential unintended consequences for children's rights. A number of other organisations have expressed similar views.

How will the Scottish Government keep Parliament updated about how the legislation is working? I do not mean looking only at whether powers should be renewed. How do we ensure a rich understanding of the actual consequences of the legislation?

Michael Russell: In my statement on Thursday I indicated two things that I am happy to repeat here.

Scottish legislation will have a maximum of six months before renewal. That seems to be where the UK Government has also now gone on the bill. That is what we will do with our bill.

Secondly, although there is no mandatory reporting on the Scottish Government in the bill—though there is mandatory reporting for the UK Government—we will make a commitment to report on the same schedule, every two months, on the use of the powers in the bill. We will put that into our emergency legislation—both retrospectively for this bill and for our own bills—so that there will be reporting on the use of the powers.

That is the important thing: to make sure that every so often—I think that every two months is appropriate—Parliament is told, by me or by another minister, which powers have been used, and is able to scrutinise that. In these extraordinary circumstances, and given the nature of this bill, we want to ensure that democratic scrutiny is, if anything, stepped up.

Clearly, there is also the difficulty of social mixing, and of the need to be aware of the requirements in that regard. As we are seeing in this room, we can do things differently. Maybe we can do much more online—I think that that is actively being examined—but we want to ensure that people know what is happening.

Angela Constance (Almond Valley) (SNP): I have a few questions about human rights and what the bill means in practice for vulnerable groups. First, though, you have spoken about using the powers as required. The bill talks about powers being triggered only in certain circumstances, once decisions have been made. You have touched on this a bit with Patrick Harvie, but it would be useful to know, in the context of devolution, how the powers will be turned off and on.

In broad terms, I wonder if you could speak to how the bill tries to strike a balance between protecting people and their health, and protecting human rights, particularly of the most vulnerable.

Michael Russell: There are various powers in the bill that can be switched on and off, and there is a procedure in the bill to allow that to happen. The switching on depends on certain things happening or being said. For example, the

“powers to issue directions relating to events, gatherings and premises”

requires a declaration to be made that

“the incidence or transmission of coronavirus constitutes a serious and imminent threat to public health in Scotland”

and that

“the powers conferred ... will be an effective means of—

(i) preventing, protecting against, delaying or otherwise controlling”

the situation.

The chief medical officer must be consulted before the declaration is made. The declaration must be published on the Scottish Government website and in the *Edinburgh Gazette*, and that starts a public health response period. Various conditions require to be met. Most of that can take place on the same day, and most will take place on the same day, because I am absolutely certain that, once the bill is passed, and because we are in a period of transmission of coronavirus that constitutes a

“serious and imminent threat to public health”,

that is precisely what will happen. If the chief medical officer says that we have moved out of that period, and ministers agree, that power will be switched off. However, there is a mechanism for switching that power on and off, and it is perfectly possible that it will be required.

Under the health protection regulations, which involve a very wide power in the bill, regulations have to be made under the affirmative procedure. Regulations will be laid and there will be 28 days until they have to be approved. If they are not approved within 28 days, they automatically lapse.

Within the bill, there are various steps that can be taken at various times, and they are clear within each area. Some powers can be used immediately after royal assent, which we anticipate will probably be on Wednesday or Thursday—the timing has been brought forward. The House of Commons passed the bill yesterday. We will debate and hopefully pass the legislative consent motion today. The House of Lords will, I think, meet today and tomorrow, and it is hoped that there will be royal assent tomorrow. The powers in the bill will then come into effect; some of them can be used immediately and some will require action.

In terms of the most vulnerable people, mental health is an issue that Angela Constance knows much more about than I do—she is a much greater expert than I am in these matters. There are provisions on mental health in the bill that are severe in terms of what could happen. The intention is that those powers will be used only when there is a shortage of staff, and when the system could not operate unless alternative powers were available. However, it would be a very sparing use of the powers. That is part of the reporting process. I would expect that we would want to—and should—report when those powers have been used, so that we are aware that they are being used, and so that they are examined in all the circumstances. I give a commitment that we will endeavour to do so. However, we recognise that this is a time of extraordinary difficulty and that the human rights legislation allows actions to be taken at such times, provided that we are all

aware that the situation is special and that it does not last for a prolonged period.

Angela Constance: I point out for the record that, in a former life, I was a mental health officer and closely involved in the compulsory detention of people who needed compulsory care and treatment. Therefore, it was hard to read that many of the hard-won gains in terms of patients’ rights might now, by necessity, have to be stepped back from in some circumstances. The cabinet secretary’s reassurance about how that will be monitored and reported is helpful.

Earlier, the cabinet secretary intimated that the Scottish Government was involved in the development of the bill. Will he say a bit more about how that involvement was secured and about who he has involved in his deliberations, particularly around how we safeguard human rights? There are many well-established stakeholders and human rights organisations close at hand in Scotland.

Michael Russell: The bill’s genesis lies in preparations that were made some time ago for emergency legislation in case of flu or a pandemic. As a result of that process, the bill was able to be picked up and populated with more detail and then there was a very urgent process of consultation between the four Governments. It has not been possible for them to undertake more than cursory stakeholder engagement in terms of finding out from expert groups exactly what would or would not work.

There is now an opportunity to have a longer conversation about it. We need to get it on the statute book and then have a conversation about how it will be implemented. That is unusual, but we need to have a conversation and for people to be sensitive to the issues. As you probably know—I think that I mentioned it in my statement—I took the opportunity to speak to the Scottish Human Rights Commission last week to make sure that it was aware of our thinking and we were aware of its thinking on the matter.

We recognise the exceptional circumstances that we are in. We need to be aware of the commission’s concerns and wider stakeholder concerns and make sure that we build that into our reporting procedures, for example. I have made a commitment to undertake reporting procedures and to ensure that any renewal is six-monthly, not two-yearly, and we will consult other stakeholders. There is a lot of legal thinking going on about it and we need to be sensitive to that as well.

I deliberately make the point that we need to get on and pass this legislation, because it is vital in terms of protecting communities and individuals. We accept that there is a balance to be struck, but we need to get on and do it.

Angela Constance: Okay. I am conscious that you are not the cabinet secretary for everything, but can you say something about the protection of vulnerable groups scheme? There is some helpful correspondence between the Education and Skills Committee and the Deputy First Minister, to which I have paid very close attention, but for the purpose of this morning's proceedings can you say anything about why the measures have been put in place, or will be put in place, and why they are necessary?

Michael Russell: As we are both aware, I have been involved in the protection of vulnerable groups issue in another life, as the Cabinet Secretary for Education and Lifelong Learning. We must continue to ensure that people who are working with children are scrutinised and that they are there for the right reasons and in the right way. Equally, we are aware that the system may not operate as effectively or efficiently as it has done in the past, because, for example, there may be a shortage of staff in the present circumstances.

We are trying to achieve a temporary disapplication of disclosure offences, while still making sure that it will be possible to get information. By that I mean that a check may not give the full background, but we will be able to say whether somebody is on the register or not and that may give some guidance. Equally, we will only do that as we are required to. We have to issue a direction to suspend two offences and a protection of vulnerable groups, and that is what we will do. However, we will do it only if we absolutely need to. The intention is to assist NHS boards to quickly recruit and deploy temporarily registered healthcare staff into front-line roles. It could also be used in social care, to provide emergency cover. We are aware of the difficulties that people would be concerned about. Therefore, it will be done only in those circumstances, and it will be done sparingly.

11:15

Angela Constance: For the avoidance of doubt, is it the case that Disclosure Scotland will report any barred individual who seeks to exploit the pandemic to Police Scotland?

Michael Russell: We will be very sensitive, and there are procedures to ensure that we are sensitive and that we are not put in a position in which anybody would try to misuse the provisions. We can reclassify disclosure requests, so that the information given is less comprehensive. However, we can ensure that reporting happens.

Angela Constance: In the LCM and in legislation, there are many examples in which duties will be reduced to powers or legal duties will

be suspended, in many areas that are designed to support vulnerable adults and children.

I understand that the laying aside of duties to provide, for example, for particular social work assessments to take place is intended to enable a flexible and fast response during the pandemic in order to get support to those who need it. In working very closely with local authorities, how will we assure that that works in practice?

Michael Russell: Concern has been expressed that that provision might allow local authorities to dispense with the detailed consideration that they need to undertake. However, it exists only to ensure that there are not undue delays. If undue delays occurred because of a requirement to complete an assessment, that would not be in the interests of the individuals concerned. However, it is not a blanket removal of the obligation on local authorities to ensure that assessments take place, and it is certainly not a blanket opportunity for local authorities to refuse to assess, which is what people fear.

I know that local authorities will not do that. However, the provisions are focused on saying that we should not delay the process of assessment until it is completed, every t is crossed and every i is dotted, in order to get help to people. That is what is intended. It is a temporary power, and we will report on its use.

Alex Rowley: The NHS in England has negotiated a deal with the private sector. Do you have the powers to negotiate such a deal in Scotland, or to commandeer facilities and staff that are in the private health sector?

Michael Russell: The bill would allow us to do that. However, I understand from discussions that I have been part of that there is a much smaller private sector in Scotland—about 200 beds—and that that process has taken place.

Alex Rowley: I received an email this morning from the joint trade unions in Fife. It says:

"Our members in social care here in Fife are struggling to get basic personal protective equipment".

There is a need for some centralised distribution and overview. That issue for front-line workers arises not only in social care—the police were mentioned the other day during the discussion about the closing of pubs. The chief constable was excellent in making it clear that his officers would need PPE.

We are empowering all key priority workers. However, front-line social care workers are not getting the protection that they need. What can be done about that? Does the legislation allow you to do more?

Michael Russell: The legislation is required to allow us to do that, and everything is being done to try and do it. There is a huge push to ensure that, if there are places where PPE has not yet reached, it will reach those places. I dealt with a similar case in my constituency over the weekend. Everybody is pushing very hard to ensure that that happens.

Where there are any blockages or shortages, material is being transferred, and people are trying to ensure that that material reaches the places where it is needed as quickly as possible. That is happening but, where it is not happening, people are quite right to say that they need that material now. Everybody is working hard to get it to where it needs to be—everybody.

Alex Rowley: Is there a central command in that regard?

Michael Russell: Yes. The chief medical officer is absolutely apprised of what needs to be done and is making sure that it is done. You heard the health secretary say last week in the chamber that, whenever she is notified that there are problems, she gets involved to ensure that those problems are solved. Nobody is withholding material. They are trying to get material out as quickly as possible and are trying to source material, where it is possible to do so, as quickly as possible. Everybody wants that done and everybody is trying to get it done.

Angela Constance: I would not want you to leave a meeting of the Finance and Constitution Committee without any of us asking you about money, cabinet secretary. The bill says that the costs will be met by Parliament. What consideration, if any, have you given to what will happen if the total costs amount to more than the £780 million in consequentials?

Michael Russell: We will have to spend what we are required to spend in the circumstances. That is a discussion that is taking place with the UK Government, and it is absolutely aware of the issue. We have set aside funds—funds that are set aside in the UK Government's budget. We liaise on a daily if not hourly basis with the Treasury. We are passing on money as soon as we are able to do so and are taking account of any circumstances in which the approach in Scotland differs from the approach in the UK, and we will go on doing so. This is not a situation in which we can sit back and say that we will not do things until the money is there. Things will be done but, of course, we have to ensure that money is available to pay for them, and those discussions are taking place.

The Convener: I have one other area to cover and a couple of suggestions that might be useful to follow up on.

As we saw over the weekend, many people did not take cognizance of the social distancing and essential travel guidance that had been provided by the Governments. Parts of our constituencies—Loch Lomond and the Trossachs national park, the Highlands and the former fishing villages in the east of Scotland—were overwhelmed by visitors, and concerns were raised about the number of campervans and motorhomes that were seen in those areas. I do not believe that that situation will happen again, but if it does, what powers already exist or will exist as a result of the bill to help to control it?

Michael Russell: We can ensure that camping grounds and public access grounds are closed. I understand that Forest and Land Scotland has closed its camping and recreational areas to campervans and others. Some places are open for people to walk, but not to stop or park up. Those powers exist—they can be used and they will be used.

Clearly, there are people who are legitimately in places, but the requirements on exercise—the rules that the First Minister talked about yesterday, need to be observed—and that changes how people go about and do things. As you know—we discussed this over the weekend—in the islands, the issue that you raise has been huge. Caledonian MacBrayne and the other ferry operators are absolutely clear that there is to be no non-essential travel.

I will say it even more bluntly: just do not move about. Do not think that you can move with impunity. Do not do so.

People will be welcome when this is over, but they cannot come now to any of those places, because that would be foolish. There was an extraordinarily foolish piece in an English newspaper last week and another one in an English magazine yesterday. People need to realise that travelling to those places is utterly irresponsible. They should stay away, not least because, in the Highlands and Islands—as you know, because your constituency covers some of those parts—there are our limited resources in terms of supporting the population, and they cannot be put under more pressure.

The Convener: A couple of other points have been brought to my attention, which I think are matters for you to take away. Interrupted business and insurance are a concern for bed and breakfast and holiday cottage businesses and caravan parks, many of which think that they will not be able to secure the necessary resource from insurers unless specific stop orders—for want of a better description—are put in place.

It is the same for football clubs. I know that some people might not think that they are a high

priority at this stage, but they employ a lot of people. Unless some sort of order or directive comes from the Government, broadcasters will potentially be resistant to paying out broadcasting money—although I hope that they will not be. Clubs might seek from you the opportunity for orders or directives to be made to them, even though they have already closed voluntarily.

Michael Russell: An awful lot of things will need to be done—

The Convener: I am aware of that.

Michael Russell: If we do not need to do something because it has happened already, we should not do it.

If any bureaucratic organisation is sitting back and saying, “We’re not doing anything until you show us a piece of paper that is stamped in triplicate,” I hope that it stops doing so immediately. As far as we are concerned, these places are closed because they have to be closed. Therefore, there is no dubiety about it. The bill will give power to close places that do not listen; those that have listened should not be penalised.

I ask people to be sensible about this and to operate in a way that recognises the extraordinary emergency that we are engaged in. Do not wait for someone else to give you something else that you need.

The Convener: That is fair comment.

Thank you very much for being able to deal with so much detail in our questions. The detail that we asked for was not always about the specifics of the bill, although much of it was.

We move to item 3, which the committee agreed to take in public. I invite the committee to agree to recommend to the Scottish Parliament that it agrees that the relevant provisions of the Coronavirus Bill, which was introduced in the House of Commons on 19 March 2020, in so far as they fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish ministers, be considered by the UK Parliament.

To inform the debate in the Parliament this afternoon, I invite members also to agree that we will write to the Scottish Government confirming our decision and that we will publish that letter on our website as soon as possible.

Members indicated agreement.

The Convener: Thank you very much for your time, cabinet secretary.

Michael Russell: The legislative consent motion will be taken this afternoon. In light of that, thank you; we hope to have this concluded by the end of the working day.

The Convener: Thank you.

Subordinate Legislation

Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2020 (SSI 2020/65)

11:28

The Convener: I invite the Minister for Public Finance and Migration to move motion S5M-21240.

Motion moved,

That the Finance and Constitution Committee recommends that the Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2020 (SSI 2020/65) be approved.—
[Ben Macpherson]

Motion agreed to.

The Convener: We will publish our report in the coming days.

Meeting closed at 11:29.

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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