



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Wednesday 29 April 2020

Session 5



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COVID-19 COMMITTEE

2nd Meeting 2020, Session 5

CONVENER

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

DEPUTY CONVENER

*Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Russell (Cabinet Secretary for the Constitution, Europe and External Affairs)
John Swinney (Deputy First Minister and Cabinet Secretary for Education and Skills)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Wednesday 29 April 2020

[The Convener opened the meeting at 14:30]

“COVID-19—A Framework for Decision Making”

The Convener (Murdo Fraser): Good afternoon, and welcome to the second meeting of the COVID-19 Committee.

For our first agenda item, we are joined by John Swinney, the Deputy First Minister and Cabinet Secretary for Education and Skills, who will give evidence on the Scottish Government’s framework for decision making on Covid-19, which was published last week. I am aware that the Deputy First Minister has another engagement at 4pm, so I will ensure that the session is wrapped up before then. I welcome Mr Swinney and invite him to make a short opening statement.

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Thank you, convener.

First, I place on record my thanks to the people of Scotland for following the public health advice to stay at home. The impact of the virus in Scotland has been profound, and everyone has been affected. However, we know that the lockdown remains vital. It is only because of the action of the people of Scotland that we are now seeing progress against the virus.

The First Minister explained last week that we want to be open and transparent about the options for Scotland, which is why we published “COVID-19—A Framework for Decision Making”. I welcome the opportunity to discuss the document with the committee today.

It is only when we are sure that the virus is under control that we can start to ease restrictions. When we take them, our steps will need to be careful, gradual, incremental and probably quite small to start with. The new normal will be different from the lives that we had before. Physical distancing and limiting our contact with others might well be a fact of life for some time to come. However, we have the opportunity to work together to decide the kind of Scotland that we want to emerge from this crisis.

The paper that was published last Thursday sets out the objectives and the principles that will guide us, the different factors that we will need to take into account, the framework under which we

will take decisions and the preparations that we need to make now. Central to that is consideration of the harms that are caused by the virus to health, society and the economy. In the days and weeks ahead, evidence, data and modelling will enable us to take firmer decisions. As the First Minister has said, we will share our thinking on an on-going and iterative basis.

As the paper outlines, we will follow seven principles for decision making: decisions will be safe, lawful, evidence-based, fair and ethical, clear, realistic and collective. We will learn from the international community—in particular, from the countries that are further ahead than Scotland in the pandemic curve. However, it is too early to tell from international comparisons what the safest and most effective approach might be. Most countries are at the starting point of lifting interventions, and there will be a time lag between lifting them and seeing an impact.

In the coming days, we will publish an update to the framework, which is intended to include an assessment of the evidence on the spread of the virus, a summary of the restrictions that are currently in place, some of the options to be considered around variation of distancing measures, and consideration of the harms that are caused by the virus. We will consider the options that are set out in that paper as part of our review of the current restrictions. That review must be completed no later than 7 May.

We recognise that a successful transition out of the current lockdown arrangements will require unprecedented levels of support and compliance from the whole population. That means that openness, transparency and a clear articulation of why specific decisions are being taken are essential.

We will also set out how we intend to facilitate the next phase of dialogue with the public on the Covid-19 decision-making process, which will occur in due course.

On the basis of those comments, I look forward to addressing any further points that the committee wishes to put to me.

The Convener: Thank you for that very helpful opening statement. Members are interested in pursuing the scientific and evidence bases for decisions that will be taken, public engagement and the practical implications of easing the current lockdown.

I remind members and Mr Swinney to be aware that the broadcasting arrangements are such that, before speaking, each speaker should take a breath to allow the system to catch up.

I will start by asking about the science that underpins the decision-making process that the

Scottish Government will undertake in due course. Epidemiologists such as Professor Neil Ferguson have stated that, in the absence of a vaccine, Covid-19 could end up infecting 80 per cent of the population. So far, the containment strategy that has been pursued by the Scottish Government has been successful in suppressing the number of cases. However, as its framework document makes clear, the lockdown cannot continue forever. If it is eased, there is a risk of there being a second wave of transmission or, indeed, of subsequent such waves. Is it the Scottish Government's view that, without a vaccine, we could still see a very large percentage of the population being affected by the coronavirus and that we are therefore simply trying to restrict its spread so that its impact on the national health service is contained as far as possible? Alternatively, is there hope and expectation that its overall impact could be restricted below such a level?

John Swinney: Our hope would be to restrict the spread of the coronavirus in our society to the lowest possible level. Although I understand and respect the information that Professor Ferguson has set out—he generates a huge amount of valuable material—I do not think that we are necessarily obliged to accept that the type of scenario that he paints is inevitable. If there is, by the public, a sustained approach towards the basic elements of behaviour that we have encouraged throughout the pandemic—such as those on hand washing, what has become known as coughing etiquette and the application of social distancing—and other measures that we have put in place, we would work towards trying to minimise the effects of the spread of the virus.

However, we have to accept that we have learned from the lockdown that the restrictive arrangements that we have had in place have been effective in slowing up the spread. Although there might be variations of the lockdown, which would not mean perpetual lockdown—I accept your premise, convener, that we cannot be in lockdown forever, because that would be neither desirable nor palatable—there might have to be changes to the ways in which we live our lives and how we act, travel and conduct ourselves in order to minimise the spread of the coronavirus. Those will be very much at the heart of the next phase of the agenda that the Government will pursue.

The Convener: Other members want to come in to ask a bit more about the science behind the assumptions in the Government's paper. First, though, I will ask a different question, which is about the impacts of lockdown, especially on the business community, which I think that you would recognise has, in the main, responded very well to the arrangements that have been put in place. Many businesses have taken the decision to close

voluntarily, when they have not been legally obliged to do so, and have furloughed their staff. However, of course, they are keen to return to work. From an economic point of view, I think that we would all want to see people back at work as soon as it is safe for them to be there.

As I am sure that you will have seen in the past couple of days, some large construction companies have been talking about returning to work in May—while, of course, exercising social distancing. What is the Scottish Government's view of that? What advice would you give such companies? Clearly, they will have to plan ahead for going back to work; they cannot think that they can simply make such a decision and then go back the following day. What advice would you give their workforces, who might have their own concerns about safety?

John Swinney: The paper that we have constructed tries to properly and comprehensively tabulate the harms that Covid-19 causes. It sets out the four harms. The first is the direct health harm: the primary reason for the lockdown is the dangers that the virus poses to the population. We are making significant progress in tackling that direct harm as a consequence of the participation of the public and the business community in the lockdown.

The non-Covid health harm is also affecting the population. The number of general practitioner referrals for cancer treatment in Scotland has fallen by more than 70 per cent. None of us believes that cancer in our society has reduced to that extent, so members of the public are clearly holding back from coming forward with other health problems, and that is undesirable.

There is then the social harm. I am acutely aware that families in our communities are facing challenges, and that Covid-19 is causing damage and disruption. The loss of formal education services for our young people is a significant problem.

Finally, as you correctly said, the business community has suffered a significant impact as a consequence of the situation.

Our paper tries to open up a discussion about the fact that we need to decide our next steps, considering all those different factors as they affect our society. We can see how each of those harms—direct Covid health harm, non-Covid health harm, social harm and economic harm—damages Scottish society. The paper tries to open up a discussion about how we can make progress on some of those questions.

That brings me to the construction sector. We are going through a process of providing advice to the public that takes into account the best modelling information and scientific advice that we

have, and that will signal when we can consider it to be safe for certain activities to resume at particular stages. At this stage, I can see nothing that says that we should change our disposition from what we, as a Government, have set out. I hope that, sooner rather than later, we get to a point at which we can change that disposition, but we are not at that point just now. The fundamental reason for that is narrated in our paper. We have to make sure that the reproduction number of the coronavirus is kept as low as possible, and we do not believe that it is low enough just now to enable us to resume some of the wider activities that I readily acknowledge individuals and companies wish to resume. However, I assure you and the wider business sector that the Government will not hold back a minute longer than we have to when making a judgment on the safety of the public and the containment of coronavirus.

The Convener: Thank you Deputy First Minister. It is helpful to get that steer from you.

Shona Robison has some questions about the evidence and public engagement.

Shona Robison (Dundee City East) (SNP): Good afternoon. The framework is a good document and it is right that it will be built on. In the covering letter that you sent with the framework, you talk about how the document sets out some of the challenges that you have just spoken about and the principles that will decide the decisions that are being made. You go on to say that the document

“will be updated as evidence, modelling, and our assessment of the different options open to us develop.”

It would be helpful to hear about what the sources of evidence and information will be and what relative weight will be given to them. You might get differing opinions and expert advice and it will be difficult to wrestle with those. How will the Government distil some of that and apply judgment to the options?

14:45

John Swinney: On all questions, there is a range of opinions on how best to proceed; I have experience of that in my core education portfolio. Any observer of the current debate on coronavirus will recognise that, within the scientific community, there is a diversity of opinion on the approaches to take.

The Government listens carefully to a wide range of scientific opinion. We have the benefit of hearing the material that is discussed in the United Kingdom Government’s scientific advisory group for emergencies, to which we have access. We have also established an advisory group for the chief medical officer, which is convened by Professor Andrew Morris and which brings

together a broad cross-section of scientific opinion. That group essentially takes some of the SAGE advice—and wider advice—and distils it in relation to some of the issues that the Scottish Government and Scottish society need to be aware of.

Of course, there is also the work that is undertaken within Government to model impacts in a number of areas of activity. Some of that is the modelling of the impact of coronavirus as a direct health harm to the population and, as the convener raised a second ago, some is the modelling of economic impact, which the chief economist set out at the First Minister’s briefing the other day. We also benefit from the input of the Government’s chief social work adviser and chief social policy adviser, which, along with the input of the chief scientist and chief scientific adviser, helps us to form views. All that information is distilled.

The best way to tackle that diversity of opinion is to follow the thinking behind the document, which is to be as open and transparent as possible about that information, so that it is shared widely, it is understood by the public and the Government makes its best judgments, based on that evidence. That will not mean that we can accept all the scientific advice, because some of it will be contradictory. However, we must make our best judgment based on the evidence and advice that we have in front of us and explain that in an open fashion to the public, in order to build consent and support for the position that we take.

Shona Robison: In your opening remarks, you spoke about learning from other countries and looking at the international evidence, but you caveated that by saying that they were all at early stages of easing restrictions. That learning will be important; in fact, it will be key. In Germany, for example, there is a rise in cases again. Is it the case that the options might have to change as circumstances change and that there will have to be fluidity? If we set off down one path and we see a rise in cases, we might have to change that quickly. I presume that that will be built into the thinking.

John Swinney: At the heart of the document that we have published and the steps that we intend to take with our decision making, we make clear that the most important consideration is suppressing the virus. Without that, our national health service risks being overwhelmed. Because of the tremendous commitment of national health service staff over the course of the past few months, we have managed to build capacity and reconfigure our national health service, with a speed and focus that have been laudable. That has got us to a point at which our national health service has not been overwhelmed in any way and

has had ample operational capacity to deal with the challenge of coronavirus. However, that has come at a price for non-Covid health conditions, which have not been attended to, as I have already accepted.

Right at the heart of all this, we have recognised the danger that coronavirus poses to the population, and the necessity of ensuring that our health service remains robust and able to handle its impact. If we took steps that resulted in a rise in case load and a movement in the opposite direction from the one that we want to see, we would of course have to reapply measures to try to protect the fundamentals of society and the ability of the NHS to provide that assurance to members of the public.

Looking at international examples and seeing the experience of other countries can inform the debate and provide the public with some rationale and context to help them understand why the Government is perhaps not moving as fast to relax the restrictions as they would like it to. The reason why we cannot move that fast is that it would be dangerous to the public for us to do so.

The fundamental questions that we must keep asking are these: where is the reproduction number for coronavirus and where is the number of cases? If we found those numbers moving in the opposite direction from the one that we are trying to secure—reducing the number of cases and the reproduction number—we would potentially have to reapply some of the restrictions that we might have lifted.

Shona Robison: You mentioned the involvement and consent of the public. In response to my question yesterday, Mr Russell talked about the Scottish Government putting some thought to how the public could be involved in the conversation that the framework intends to start and keep going. Have you had any further thoughts or have there been any developments on the practicalities of how that might happen?

John Swinney: In the seven or so days since the document's publication, it has been viewed or downloaded on about 400,000 occasions. That is a significant indication of the interest of members of the public in the issues with which we are grappling. We have provided in the document an opportunity for members of the public to send their feedback directly to us.

It is not a routine Government consultation document. We cannot wait 12 weeks for members of the public to take the opportunity to feed back. We need to find a more immediate way of doing that, so that we can hear what the public are saying and what their reactions are to certain issues. That will become ever clearer the more we furnish the framework document with information

about the options that we will be considering and modelling. It is very important that we get that direct feedback from members of the public.

We are looking actively at mechanisms that would enable that more vigorous public interaction with the document, and we hope to be able to give some more details about that in the next few days. We want a very direct channel for members of the public to input their thinking, and we want to be able to gather that in a prompt and efficient fashion, so that the Government can be closely aware of what members of the public are thinking about the options with which we are wrestling. We are keen to make sure that that is done in a fashion that is different from traditional Government consultation mechanisms, in which, in essence, we publish a document, then wait a number of weeks before we hear anything from members of the public. This issue is too immediate for us to leave it that long, so we want to make sure that we hear that feedback from the public as swiftly as possible.

The Convener: Before I bring in Ross Greer, who is the next questioner, I would like to follow up on Shona Robison's question about public engagement. Do you see this committee of Parliament as having a role as a forum for putting forward views to the Government?

John Swinney: The COVID-19 Committee would be a very welcome platform for that. Its formation is an indication of Parliament's recognition of the seriousness of the issues that we face. Obviously, subject committees can look at a variety of issues that are within their responsibilities, but the COVID-19 Committee provides a place to gather some of that thinking.

I very much welcome this opportunity to explain in more detail the thinking that has gone into the framework document. I know that ministers—as I certainly am—are happy to appear before the committee to address any issues. As we hear the views of members of the public, we would be keen to ensure that those are widely shared, and the committee might have a role to perform in scrutinising some of that thinking and the Government's response to their questions.

I suspect that, during today's evidence session, I will not be able to provide definitive answers to the committee about the steps that we might take. However, we will get to the point at which we take definitive steps, and we should be scrutinised on those. Ministers will be happy to engage with the committee on those and any other questions.

The Convener: That is very helpful, and committee members will reflect on how best to assess and bring forward public opinion.

Ross Greer (West Scotland) (Green): I will ask about the objective of suppression, which was

outlined by the Deputy First Minister. Suppression is not the objective that some countries are pursuing. As is mentioned in its “National Action Plan 3”,

“New Zealand’s strategy remains to eliminate Covid-19 and to stamp out transmission in affected clusters.”

Other countries, too, including Vietnam, which is obviously far larger than New Zealand or Scotland, have successfully pursued an elimination strategy.

There is a big difference between a strategy of suppression and a strategy of elimination. The premise of a suppression strategy is to minimise harm until a vaccine is developed. In evidence to yesterday’s Health and Sport Committee, Professor Hugh Pennington said that he had advised the Scottish Government to pursue elimination, and he argued that an aggressive test, trace and isolate strategy might make elimination by Christmas possible. Will the cabinet secretary outline why the Scottish Government is pursuing suppression, rather than elimination?

John Swinney: In a sense, there is not, I think, a significant difference between the points that are being expressed. I cannot see how the agenda that we are progressing, and the steps that we are taking to tackle the coronavirus, will involve anything other than a test, trace and isolate strategy. The framework document looks at various steps that we might take when we establish headroom between the reproduction number and the level by which our national health service cannot cope with the impact of Covid-19. As part of those measures, we will pursue a test, trace and isolate strategy.

The Government’s objective is to ensure that we eliminate the coronavirus. The terminology that I use is to say that we will suppress the virus as far as we can, and that we will use techniques including test, trace and isolate to secure that objective. That will be an essential part of the Government’s response, so that we get from where we are today to where we need to be to tackle the effects of Covid-19 in our society.

Ross Greer: Will you clarify whether it is the Government’s objective to achieve, in the absence of a vaccine, the level of elimination that has been achieved in New Zealand and Vietnam, for example? Essentially, your contention is that the difference between suppression and elimination is one of language. It would be helpful if you could confirm that the Government is attempting, in the absence of a vaccine, to develop an elimination strategy.

15:00

John Swinney: I am not trying to be difficult: we are trying to do both. We are trying to find a vaccine and we are trying to reduce the impact of

Covid-19 as much as possible, in the absence of a vaccine. If that approach reduces the effects of Covid-19 to the point at which we are, in many respects, less dependent on a vaccine, that will be a major success of the strategy that we take forward. I am trying to make the point that we should not say that it is simply an either/or.

We are keen to secure a vaccine in order to give us long-term security from Covid-19 but, equally, we are trying to be as effective as possible in suppressing the effects of Covid-19 on our society in the short, medium and long terms. That is the entire focus of all the measures that we are implementing. There is not a level of Covid-19 in our society that ministers are keen to tolerate; that is not our objective. We want to protect the population from Covid-19; we will do all that we can to do that in the measures that we take, regardless of whether they involve a vaccine.

Ross Greer: To be clear, I of course acknowledge that the Government is pursuing a vaccine, as part of its strategy. My questions are about what we do until a vaccine is available. What assessments have been made of the impact of delays in discovery and procurement of a vaccine?

John Swinney: In a sense, that takes us back to material that I rehearsed in my previous answer. Society is not, because of the presence of Covid-19, functioning as we are all accustomed to it functioning, so we have to remove that threat from our society. If we are successful in removing it through the various measures that we take—observance of social distancing, cough etiquette, wearing face coverings in certain circumstances, and the test, trace and isolate strategy—that will represent positive progress in tackling Covid-19.

There is, obviously, the possibility that the virus could reappear simply because it is not entirely eliminated, so the question about the virus becomes relevant in order to provide long-term assurance for the population. In the absence of a vaccine, is it likely that we will have to consider restrictive measures of some sort to help us to deal with the virus within our society? That might relate to the discipline that would be required around the test, trace and isolate approach, and to restrictions that might already be in place or that we might need to consider, in due course.

We want a vaccine for long-term assurance, so the sooner one is available, the better. However, we certainly cannot pursue a strategy that operates on the basis that there is nothing that we should do until we get a vaccine; there is a lot that we should be doing before we have a vaccine. The Government’s framework document focuses on how we might assemble aspects of our approach to ensure that we are effective.

Ross Greer: Finally—and, I hope, briefly—I have a question about the evidence base for the Scottish Government's decision making, which goes back to your previous discussions with the convener and Shona Robison. There has been public concern about the evidence that the Governments in the United Kingdom are taking, and about who does and does not get to contribute to the meetings of the UK's scientific advisory group for emergencies, for example. You mentioned the Scottish Government's Covid-19 advisory group; the advice that the group provides is not currently being published, and the minutes of its meetings are very sparse.

Clearly, the evidence base that the Government is using has shifted. Only a few weeks ago, the chief medical officer said that testing works only in the window of time during which people are symptomatic, but Scottish Government policy is now to test all over-70s on admission to hospital, including people who are not symptomatic. The evidence base on that must have changed. Can you explain how the Scottish Government has taken advice, and how it plans to put advice into the public domain in order to ensure that there is public confidence in it?

John Swinney: Over the past few weeks, the Government has engaged in very open communication around all aspects of Covid-19. I can think of only a small number of issues other than Covid-19 that the Government has dealt with, to be honest.

I assure the committee of the Government's commitment to very open dialogue about the questions. That is our starting point. A range of advice comes to Government, as Shona Robison said. We have to evaluate that advice and judge what is the most compelling response that we can give to it. We then have to set out openly and clearly why we have come to those conclusions.

Obviously, the input that we get from the chief medical officer's Covid-19 advisory group is very helpful in that respect. We have published the names of the members of the group and, as Ross Greer said, we have published the minutes. The scientific advice and information that we receive from the group form part of the judgment that the Government openly sets out in the daily briefings that the First Minister and the Cabinet Secretary for Health and Sport give, and in parliamentary committees through the scrutiny that they undertake. I am certain that the Government would be very happy to engage more with committees for further scrutiny that might be required in that respect.

Ross Greer: Will you publish the advice?

John Swinney: I will certainly take that issue away to consider with other ministers. I will come

to a judgment on that and will be happy to advise the committee of that.

The Convener: Monica Lennon has a brief supplementary question.

Monica Lennon (Central Scotland) (Lab): Ross Greer asked about an elimination strategy, and gave the examples of New Zealand and Vietnam. I do not know much about the Vietnam experience. Is the Scottish Government picking up the phone to talk to other countries? Have you had discussions with, for example, the Government of New Zealand, to find out more about the measures that it has taken and whether we can learn from its example?

John Swinney: As I said in my opening remarks, the Government is looking carefully at international evidence and advice. We are talking to a range of countries around the world to identify the steps that they are taking. Our scientific community is well connected to the international scientific community; information and advice are flowing into the chief medical officer's advisory group and the work of our chief medical officers.

The short answer to your question is yes—we are talking to other countries in order to understand the issues and perspectives with which they are wrestling.

The Convener: Okay. I am looking at the clock. We have had quite long questions and answers, and we are due to finish by 4 o'clock, to let Mr Swinney get away, so slightly shorter questions and answers would be helpful.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Is the Government looking at the arrangements for our high street businesses to reopen, post-lockdown? Clearly, there will be different arrangements that will depend on the nature of the business. Are you thinking about those arrangements and preparing guidance for businesses, so that they can operate safely when they are allowed to reopen?

John Swinney: The Government is engaged in dialogue across a range of sectors about what recovery might look like in each one. The Cabinet Secretary for Economy, Fair Work and Culture, Fiona Hyslop, has been involved in sustained discussions with all sectors of the economy and the business community on what arrangements might be, should we get to the point at which we are able to move forward from lockdown. I stress that we are not yet at that point, but we are having discussions so that we understand what might be the impacts of continuation of some of the measures that we have in place.

Social distancing will have to be a fact of life for the foreseeable future, so the high street businesses that reopen will have to think through

how they can operate in that context. Of course, some food retailers have already gone through that process and have significantly reconfigured their business propositions to take into account social distancing.

Dialogue with the business community, led by the economy secretary, is under way, and is ongoing in a range of other sectors. Ministers are actively involved in discussions.

Willie Coffey: We know that some countries, such as Denmark and Switzerland, have allowed some businesses to reopen on their high streets—all of them have clear guidelines about safe operation. Are we having a little look across the water to see how well those arrangements are working, given that we are slightly behind those countries in the pandemic?

John Swinney: We are looking carefully at the experience of other countries and at the measures and approaches that they have taken. As I said, we are doing that across a range of areas of activity in Scottish society in which ministers and officials are involved.

I go back to Shona Robison's question about the example of Germany: we will also see some of the implications of the relaxation of measures—the complications and difficulties that any relaxation can present to the approaches that are taken to tackling coronavirus. We will need to undertake a lot of learning from listening to countries that are at different stages in their handling of the pandemic. That learning will be a valuable source of intelligence for us in forming the approaches that we might wish to take.

Willie Coffey: My final question is about online and phone ordering and the safe delivery of goods to people's homes. Some businesses have adapted really well to that. Is that practice okay with the Government, even if such business activity is not exactly essential in the fight against coronavirus? We know that home deliveries can safely take place. Does the Government share the view that continuing those is okay?

John Swinney: Fundamentally, we want all businesses to operate in a safe environment—one that protects their employees and their customers in every respect. The business community has shown a huge amount of voluntary co-operation with the restrictions that have been put in place and many organisations have exercised tremendous public spiritedness in their contributions to the public health effort. I recognise that that will become ever-more challenging for as long as business activity is either paused or operating in this different fashion.

I stress that I cannot see us not having the ongoing presence of social distancing and some of the other restrictions that we have put in place.

Businesses really have to think through how they can adapt and what approaches they need to take to ensure that they have all the necessary protections in place for their staff and their customers.

They also have to be mindful of the strategic advice. We are saying to people: "Only make journeys if they are absolutely essential. Do not leave the house unless you are working on essential business. Only go to the shops infrequently or for pharmacy trips." Businesses are operating within a wider context and they have to be mindful of the wider public health advice, which is of great significance in protecting the public.

Willie Coffey: Thank you.

15:15

Beatrice Wishart (Shetland Islands) (LD): I want to ask about the R number, given that it is an important aspect of Government policy. The framework that was published last week is very clear that the R number, or transmission rate, is an important factor and that it must stay below 1 in order to avoid exponential growth. The framework says on page 11 that the current estimate of R is "between 0.6 and 1.0". That seems to be quite a wide margin, given the figure's importance. How is the number calculated, and can different R numbers be created for different parts of Scotland? Is it statistically preferable to calculate the R number using data from across the UK, given that, currently, we have a unified lockdown?

John Swinney: The R number is critical in the discussions that we are having on that question. It is the fundamental piece of information on which we have to focus. Beatrice Wishart mentioned the fact that the estimate in the framework document is between 0.6 and 1.0. I do not think that that is firm enough. We are not saying that it just has to be below 1 to allow us to feel as though we are making headway—the R number must be well below 1 for that to happen. In the most recent estimate that I have seen, the R number is sitting at about 0.7. That suggests that there is not a vast amount of difference between the current level and the level at which our health service would have real difficulty in coping with the health-related harm of Covid-19. We need to undertake sustained measures to reduce that R number. That has happened already, because the estimate was that the R number was probably in excess of 3 when the lockdown measures were introduced. We have made huge progress, with the co-operation of members of the public.

The R number is produced by the number of cases that are identified and the amount of time that it takes for the virus to reproduce among other individuals. We can be fairly confident about the

level of the R number across Scotland. However, because it is based on modelling information, the smaller the geography that we go down to—such as the component parts of Scotland—the more challenging the modelling becomes.

I am quite certain that the Scottish Government's chief statistician would be able to explain some of the variables—that might be a valuable discussion for the committee to have. He and I have discussed the question of what opportunity there might be, as a consequence of the modelling information, to identify whether there is a different position in different parts of Scotland. The sense that I got from those conversations was that the more we try to come down to a smaller population cohort, the more challenging it will be to arrive at a reliable number.

We have to ensure that the public is very firmly focused on the importance of reducing the R number so that we create the maximum headroom between the R number and 1.0 to enable us to take any decisions that might relax the current provisions that are in place. As things stand and from the information that I have seen to date, where the R number is currently sitting does not give us the level of comfort that would allow us to relax the lockdown measures.

Beatrice Wishart: Thank you, Mr Swinney—that was very helpful.

The framework document also mentions a number of other factors that will be taken into consideration beyond the transmission rate. Some of those competing priorities could become contradictory. On page 13 of the document, the Government says, "Our values matter too", while, on page 6, it says:

"We must also listen to the people of Scotland."

On page 14, the Government says that it will assess

"how well any measures can be communicated".

How are those different factors weighted, along with the R number, in the decision-making process?

John Swinney: The R number is the absolutely critical factor, because unless that reduces further, we will not have the headroom to relax the lockdown. Therefore, it is important that members of the public actively co-operate with the measures that we have set out. Their co-operation has been great so far, and it is essential that that is sustained as we move forward.

As we begin to consider what steps we might take to relax the lockdown, we face a number of choices between what can often be competing issues, as Beatrice Wishart fairly set out. The framework talks about four harms: the Covid

health harm; the non-Covid health harm; social harm; and economic harm. Elements of those harms are perhaps in conflict with one another.

We must wait until we have headroom from the reduction in the R number and, in that process, have a debate with members of the public about what might be the most important steps to take to move on from where we are today. We need to find out where public opinion is on what should be the next steps that we take. There will inevitably be differences between some of those steps, and we might not have the capacity in the headroom between R and the level at which the national health service is unable to cope to take all those steps.

For example, members of the public might say, as Mr Coffey has done, that they would like high street shops to be open a bit more; they might also say that they want the schools to be open. However, there might not be enough headroom between R and the point at which the health service would be overwhelmed to take both those measures. We would have to make judgments and explain why we considered that particular judgments were valid. It is critical that we engage with the public to make sure that we have the opportunity to understand public opinion and to respond accordingly.

Beatrice Wishart: Thank you, Mr Swinney, and thank you, convener. That was my final question—I am sorry; I should have said so at the beginning.

The Convener: Thank you.

We move on to Annabelle Ewing. *[Interruption.]* I am sorry, Annabelle—your microphone is still muted. Can we unmute Annabelle's microphone, please? *[Interruption.]* We will come back to Annabelle Ewing after we have heard from Monica Lennon.

Monica Lennon: In an answer to Shona Robison, you said that, because of all the changes that have been made, the NHS is not overwhelmed and has ample capacity, although we know that there are other issues that have arisen because of that.

Today, we learned more about the pattern of Covid-19 deaths: we know that more deaths are now occurring in care homes than in hospitals. One of today's newspapers ran a headline saying that, in care homes, one person is dying every 30 minutes from Covid. It is important that we talk about the framework and decision making, but we still face that immediate issue. Has any thought been given to what more we can do in the care sector? I know that the NHS Louisa Jordan is part of the NHS's emergency planning but, as far as I know, it is not being used. Could it be used to treat, test and isolate care home residents—the

old and vulnerable people who are still at the centre of the crisis?

John Swinney: I recognise the significance of the issues that Monica Lennon has raised about the care home sector. It is important that that sector is properly and effectively supported to provide the care that we all want it to provide for the individuals who live in care homes. As I indicated to Shona Robison, we have done some of the work that has been undertaken because there is capacity in the health service. The health service is now looking to provide support directly to care homes. Indeed, the health secretary has instructed public health directors to work closely with the care home sector to ensure that it receives the support to which it is entitled.

NHS staff are also working in the care home sector to ensure that proper support is made available. That is in addition to the work that has been undertaken to distribute PPE support directly to the care home sector so that the proper arrangements are put in place.

Where there is unused capacity in the health service, it can be deployed in the care home sector. However, I am not sure that I am properly positioned to be able to give an answer on the NHS Louisa Jordan. It strikes me that when someone is living in a care home, that is their home, and it might be enormously disruptive to move them to the NHS Louisa Jordan. It might be better to put more nursing capacity into care homes to support such individuals where they can be isolated in their own rooms. As Monica Lennon will appreciate, I am not as close to these issues as the health secretary is, but that is my judgment about what would be best for an already frail group in our society. Many individuals in our care homes also suffer from dementia, so the ability to support them in an environment that is familiar to them is important. Whatever approach we take, we have to make sure that those individuals get the support to which they are entitled.

Monica Lennon: Thank you, cabinet secretary. I am actively involved in some of those discussions with the health secretary, but it is good to know that things are not being ruled out.

The framework document acknowledges that any transition arrangements that are in place as we come out of lockdown must look at the impact on different groups. Sticking with older people, Donald Macaskill of Scottish Care recently said that blanket restrictions on people over 70, for example, who might be expected to practise social distancing for longer than the rest of the population, would be unethical and discriminatory. What is the Government's view on that? Can we rule out Scotland imposing age restrictions as we lift lockdown?

15:30

John Swinney: Monica Lennon raises one of the most difficult issues that we have to consider. On the one hand, we know from the data—and we had a vivid reminder of it at the First Minister's briefing today, through the information that Monica Lennon has cited—that Covid-19 is having a disproportionately severe effect on the elderly in our society. It is a direct health harm that is damaging to such members of our society. Equally, though, I quite understand that those who are aged over 70 are feeling enormous frustration, loneliness, anxiety and worry because they are not with their loved ones or able to see them. We are all conscious of that. It is a dilemma that we can resolve only through good dialogue and good decision making. That is why we have set out in the framework document the range of choices that we, as a society and as a country, face—in order to enable the discussion of such issues to inform our decision making.

I am not in a position to say which side of that argument the Government is coming down on, because it has not yet come to a conclusion on that. In our framework document, we have tried to set out the types of considerations that we must bear in mind. Ethical considerations are one aspect of which we must be mindful; equalities and human rights are others. We must have a rounded discussion of all those questions as we wrestle with what are clearly difficult decisions resulting from the situation in which we find ourselves.

Monica Lennon: I appreciate that those are not easy issues, and I understand why the cabinet secretary will not want to pre-empt any decisions.

Other members have talked about the challenge that we will face in fully engaging the public on such issues and about how we will need to have public consent and buy-in. Is the cabinet secretary aware of how other countries have handled that? I am aware that there have been legal challenges in other parts of the world and that other countries, such as France, have come up against huge public resistance. We need to look both at the scientific and clinical evidence and at what the law says on the human rights aspects. Is the Government actively seeking legal advice on such issues at the moment?

John Swinney: The framework that we have set out is designed to provide the public with a clear understanding of all the factors that we must take into account in coming to our decisions. Of course, one of the key considerations is that whatever we do must be lawful. As Monica Lennon will know, I am not at liberty to disclose whether the Scottish Government has or has not taken legal advice. However, I can say—as the document itself says—that what we do must be

lawful. Therefore, ministers must reflect on a whole range of considerations. We are trying to avoid making compartmentalised decisions and are aiming instead to make holistic ones across the many ethical questions that we face and across societal issues about the effects on the economy, our society and non-Covid health-related issues.

That has been a broad discussion, but the fundamental point—which I accept in Monica Lennon's question—is that there has to be good public engagement and dialogue. That is why we are giving such thought to how we can get that from members of the public in real time, not several weeks down the road, as might happen in the normal Government approach to consultation. We are spending quite a bit of time in finding the right means of hearing such views from the public. We will also listen carefully to what members of the Scottish Parliament say to us, given the contact that they will have through dialogue with members of the public in their own constituency caseloads.

The Convener: I think that, in view of the time, we need to move on. I will go back to Annabelle Ewing, in the hope that, this time, we will be able to hear what she is saying. *[Interruption.]* I am not hearing Annabelle, and I assume that nobody else is hearing her. Sorry, Annabelle. While we try to fix the gremlins in the system, we will move on to Adam Tomkins's questions.

Adam Tomkins (Glasgow) (Con): Good afternoon, everyone. Cabinet secretary, I know that there are lots of broader economic and social considerations that the Government must weigh in the balance as it grapples with the question of how and when to ease the lockdown, but for the purpose of my questions I want to put all those to one side and focus only and entirely on health.

You have been very clear in your evidence this afternoon that you and Government colleagues are, of course, aware that there are not only Covid-related health risks but a series of really quite scary and serious non-Covid-related health risks associated with the restrictions that have rightly been imposed on all of us. I want to understand a bit more than I have been able to understand so far how the Government weighs those non-Covid-related health risks against the Covid-related health risks.

You talked about tabulation. We can tabulate the number of hospital admissions for Covid and the number of Covid deaths, but how do we tabulate the risk to mental health that is being caused by isolation? How do we tabulate the fact that cancer treatments are down by more than half or the fact that cardiology wards are operating at 50 per cent of their normal capacity? How do we

then weigh that against the risks that we know exist from the coronavirus?

John Swinney: That is fundamentally a very difficult issue to reconcile. I think that the best way to think it through is to think about what effect Covid would have had on our society had we not taken the actions that we have taken. It is pretty fair to say that the health service would have been overwhelmed and we would have had much more rapid spread of the coronavirus in our society, with—if you can overwhelm something twice—the national health service being overwhelmed twice and widespread prevalence in our society.

If the national health service had been overwhelmed in that way, we would not have been able to manage various other, non-Covid health harms either. Covid has presented an emergency threat to which we have had to respond, and in the process we have essentially had to pause not all but some non-Covid health activity. I suppose the point that I am trying to get across is that it would have helped absolutely nobody if the health service had been overwhelmed by Covid and that, in the management and suppression of Covid, we have an opportunity to tackle some of the other issues.

Where I accept the challenge that Mr Tomkins puts to me is in the fact that a variety of other harms, particularly those relating to mental health, will probably have been intensified as a consequence of Covid and that a number of conditions will be, in certain patients, more acute by the time they come to be addressed than they would have been if they had been addressed as we would ordinarily have wished.

The decision-making process essentially relates to what I said in answer to Beatrice Wishart's question. The mechanism that will allow us to move forward on any front—whether that is non-Covid health, society or the economy—is getting the R number down as low as we can and creating headroom between that R number and the point at which we know the health service will not be able to cope. We will make a judgment about the most appropriate steps for us to take within that headroom, to use it for wider societal benefit.

Mr Tomkins presses me on addressing the non-Covid health harms, but others would press me on reviving the economy or on getting the schools and adult day care centres back. The purpose of the framework is to say, as I did in my initial remarks, that we will have to take incremental steps—probably small ones—out of this situation while accepting that some of the ways in which we have lived our lives until now may not be possible in the period that lies ahead.

Adam Tomkins: I am grateful for that answer and agree with everything that you said, Deputy

First Minister, in response to my first question. However, the framework document for decision making that was helpfully published by the Scottish Government last week—I welcome its publication—says that the Government proposes

“regular monitoring of the other health ... harms stemming from COVID-19, to validate our existing assessment”.

I accept that many other considerations must be added to the mix, including economic issues and the return to school that you referred to, and that that makes it even more complicated. I am trying, however, to understand how those considerations will be tabulated, monitored and weighed against one another. To put it in the vernacular, which may or may not be helpful, and focusing on the health considerations, is there a point at which the cure becomes worse than the disease? That is what I am driving at. From what you have said, it seems that there is such a point, but that it is reached only when the R number is driven down as far as it can be. It seems that R0.7 is still too high, because it does not create enough headroom to enable us to begin to relax the lockdown. Would that be a fair way to summarise the Government's position?

John Swinney: Certainly, Mr Tomkins's point that the R number is not low enough to give us comfort to start relaxing measures is a fair summary of the Government's position. We need to see R reduce further and we hope that that will happen. As each day goes by, we see more encouraging information on hospital and ICU admissions that gives us greater confidence that we are making headway in tackling the coronavirus.

For the wider non-Covid health issues that are not being addressed, we will have very good data on comparative presentation performances. I gave the example of general practitioner referrals for cancer treatment. We can compare this month with the same month a year ago on a whole range of conditions, and I will be staggered if all the referral numbers are not down. We can see that and make a judgment about the extent to which that is, in the long-term interests of our society, more damaging than taking some measures to relax the lockdown, given the fact that we have made—or hope to make in the next few weeks—significant progress in reducing the incidence of Covid.

I come back to the point that we have made a lot of progress already. R was more than 3 and is now down to 0.7, and it is members of the public who have made a really big impact on that. It is to their credit that that has happened, but we still do not have enough headroom in the system just now to be able to take some measures of relaxation.

The framework that we set out tries to marshal all the different harms in a way that is designed to address Mr Tomkins's fundamental point, which is that our society faces more than just the one harm of Covid. There are three other harms: non-Covid-19 health harm, economic harm and social harm. The framework document is based on that completely fair premise. We are trying to think through what might be the correct first steps in our response, to try to address some of the dilemmas that Mr Tomkins and other colleagues have put to me this afternoon.

15:45

Adam Tomkins: That is, again, very helpful, and I thank the Deputy First Minister.

My final question involves an example of the kinds of things that we have been talking about in the generality. At the weekend, one of the ideas floated in the press was that we might be able to take steps towards ending social isolation by enabling what were described as “bubbles” of 10 people. How low would the R number have to be for a step like that to be taken? For example, are we more than half way there—or is the question unanswerable?

John Swinney: I will take the “unanswerable” option, if the committee will forgive me.

The bubble option might be pursued; however, the point that Mr Tomkins's questions have helpfully enabled me to explain is that any one option would use up some of the headroom above the current value of R and below the point at which the health service is unable to function. Whether it was the bubble option, or schools returning, or opening up the health service for non-Covid-19 health interventions, each would take up some of that headroom, which cannot be used twice.

I completely understand that people are feeling social isolation—I can see it, I can feel it, I understand it—and if we decided that that was to be our priority, we should address that. That is what the framework document tries to do, in the full and certain knowledge that if we do one thing, we cannot do something else.

Adam Tomkins: Thank you.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Deputy First Minister, section 7 of the framework document is about adjusting to a new normal—in which I, in my eighth decade, have a particular interest. At the bottom of page 22, the document says:

“The austerity driven response to the 2008 financial crash did not work and worsened the inequality that was part of its cause; we must not repeat those mistakes.”

Looking forward to a post-pandemic, if not necessarily to a post-Covid-19, world, we will all

[*Temporary loss of sound.*] a more equal society [*Temporary loss of sound.*] in which we can modify our behaviours to achieve that. To what extent are the Government's people thinking about that, and beginning to see what lessons we can learn from the way society works, that we might apply post-pandemic, if not post-Covid-19?

John Swinney: We are exploring those points. The experience of Covid-19 has forced society to recalibrate some of its understanding of who we really rely on for our society to work effectively. We all now appreciate and understand, to a much greater extent than ever before, the significance of the contribution of those involved in health and social care in our society—it is fundamental. Equally, we have all been able to access food supplies throughout. That is a product of the contribution of many individuals who will not be handsomely rewarded within our society. The debate that has ensued about a universal basic income, particularly in moments of acute, grave financial hardship for individuals, has become much more prominent and significant in our society and is, I think, an illustration of the point. The Government is of course looking at those questions.

As Mr Stevenson will appreciate, questions such as that have a bearing on the programme for government that we bring forward, and ministers will reflect on those issues. The committee will understand that ministers are pretty much consumed by Covid-only issues just now. However, we have got some of our teams looking further ahead to identify what might be the appropriate course of action to take.

Stewart Stevenson: I think that farmers and fishermen and all the staff who work for them will very much welcome the tenor of the Deputy First Minister's remarks. I do not wish to ask anything more.

The Convener: Thank you. We will now go back to Annabelle Ewing—I hope that, on the third attempt, we will hear you.

Annabelle Ewing (Cowdenbeath) (SNP): Good afternoon, convener—I hope that you can.

The Convener: We can, yes.

Annabelle Ewing: Excellent! Third time lucky.

In his opening remarks, the Deputy First Minister praised the hugely commendable buy-in from the people of Scotland to the lockdown measures thus far. That buy-in has of course been pivotal to the progress that we see in suppressing the virus. A number of other members also mentioned that.

The judgment of Solomon will have to be exercised over the next steps, given all the competing issues that we have discussed this

afternoon. I want to seek clarification that the perceived likelihood of buy-in from the people of Scotland will be factored in not simply in the generality, but with regard to each specific decision and to the consequences of the making of one decision for other things therefore not happening or not being relaxed. That will be really important to ensure that we will see success.

John Swinney: One of the challenges in dealing with that question is that competing priorities may well come forward from that discussion. In answering the questions that Adam Tomkins asked a moment ago, I was trying to get across the fact that there will be a limited amount of headroom between where the R number is and the point at which we are in danger of overwhelming the national health service. That limited headroom will not be enough to afford all the priorities that people might wish.

We may therefore have to make the judgment of Solomon about what priorities we decide to pursue and in relation to where we say that there is a greater importance of doing this than that. However, crucially, I give the committee the commitment—which is inherent in the document that the First Minister published—that the Government will be open and transparent about its decisions and why it has made them. We will, obviously and as we would expect, stand scrutiny on all those decisions.

I certainly cannot say that it will be possible for us to do all the things that are put to us, because I simply do not believe that there will be sufficient headroom between the R number and the challenges for the health service that prompted us to act in the way that we have acted over the past couple of months.

Annabelle Ewing: Although we are likely to have limited headroom for the next steps, it is hoped that there will be at least some variation on where we are, albeit realistically perhaps more limited than people would hope. Given that, and the introduction of, if you like, new issues, circumstances and rules, will it not be crucial that there are very clear demarcation lines as to what is and what is not okay? That should be crystal clear; it is important to continuing buy-in that people understand why something is or is not being done.

John Swinney: That is an absolutely crucial point and one that has been made very clearly by the chief constable, if I can go to that end of the spectrum. The chief constable is able to be very clear with his officers and the public about what is acceptable and what is not in the current context. The minute that we move away from that, it will become a lot more difficult to enforce. I will return to Mr Tomkins's question about a bubble of 10 people. I might have my bubble of 10 people for

Wednesday afternoon, but I might have a different bubble of people for Thursday afternoon—there is absolutely no way that the police can say whether I have two bubbles of people or just one. Inevitably, it gets more complicated and complex, so we have to be very mindful of those questions when we take the next tentative steps, when that opportunity arises.

Annabelle Ewing: When we get to that stage, whenever that is and whatever it will entail, I would like clarification that those crucial matters—they are not just legalistic points, but crucial matters—of variation and differing interpretation are kept under constant review so that they can be tackled head on, before compliance starts to fray at the edges.

John Swinney: One of the crucial questions that we have wrestled with throughout the Covid experience has been the necessity for clear, understandable communication about all aspects of what we are asking members of the public to do. Making sure that we get those messages correct and that we present them in the most effective way to members of the public has consumed a huge amount of thinking within Government. There are huge challenges in doing that, but I give Annabelle Ewing and the committee the assurance that that will be very much at the heart of the Government's thinking as we try to address those questions.

The Convener: I thank Annabelle Ewing for those questions—I am glad that we could finally hear from her. I thank Mr Swinney for his time and for his engagement with the committee. I am sure that we will continue to have dialogue with the Government in the weeks ahead as we scrutinise legislation and consider some of the wider issues. We will suspend briefly before we move on to the next item of business.

15:58

Meeting suspended.

16:05

On resuming—

Subordinate Legislation

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 2) Regulations 2020 (SSI 2020/126)

The Convener: The next item is to take evidence on the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 2) Regulations 2020. We have with us the Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government, Michael Russell. I welcome Mr Russell back to the committee and invite him to introduce and speak to the regulations.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): As I explained last Friday, it is presently my responsibility to take forward the legislative part of the Scottish Government's response to the pandemic. That includes the regulations that give effect to various aspects of the lockdown.

As some of the activity in the legislative response precedes the establishment of the committee and the regulations are amending regulations, I will recap the background.

The lockdown regulations—the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020—came into force on 26 March. The regulations were made using the made affirmative procedure, and they came into force immediately after they were made. They were approved by resolution of Parliament on 1 April 2020. Minor textual adjustments were made to the principal regulations by amending regulations.

The principal regulations make a number of provisions for the lockdown. Broadly, those cover requiring people to stay at home, other than for very limited purposes, closing certain businesses and venues, and stopping gatherings of more than two people in public, other than for very limited purposes. The regulations need to be reviewed at least once every 21 days.

The First Minister announced the outcome of the first review of the restrictions and requirements that are set out in the principal regulations on 16 April. The outcome of that review was that the requirements and restrictions remain necessary. The next review period ends on 7 May.

The Scottish Government made amending regulations by way of the made affirmative procedure on 21 April. Those amendments entered into force immediately after being made, and a plenary vote on the amending regulations is planned for next week.

The amending regulations make a number of adjustments to the principal regulations to adjust areas in which the regulations could operate more effectively, to ensure that physical distancing is maintained as widely as possible, and to clarify specific circumstances and remove any ambiguity from the principal regulations. The proposals were developed in line with the four-nations approach that we are taking, and many of the same measures have been taken by the other Administrations.

The amending regulations strengthen the position that is already set out in our guidance that all businesses must take all reasonable steps to ensure that their employees are able to maintain physical distancing. Businesses must also take reasonable measures to ensure that they admit people into their premises in sufficiently small numbers to maintain a distance of 2m, and they must take reasonable steps to ensure that that distance can be maintained by people—that is, customers—who are waiting to enter their premises. Adding that to the regulations extends the enforcement powers of local authorities and the police. If a business is unreasonably not following physical distancing rules, it could be fined or, ultimately, prosecuted. That ensures that there are additional tools to help to address reports of poor social distancing and to take measures to reverse those.

The amending regulations make it clear that some businesses can remain open. That includes livestock markets, which are critical to the food supply chain in Scotland, and a wider range of money services businesses, including currency exchange offices and savings clubs, to ensure that people have access to financial services at this difficult time. We have also been clear that holiday accommodation businesses must close at the moment, unless they are delivering the specific services that are set out in the principal regulations, such as providing accommodation for key workers.

I am sure that we are all looking forward to a time in the future when those restrictions can be relaxed. Although we do not know when that will be, some companies might wish to take bookings for future dates, when they have reopened to the public. The amending regulations enable holiday accommodation services to take online bookings and provide information for future dates when those services are no longer closed.

Finally, the amending regulations also make clear that burial grounds and gardens of remembrance that are associated with crematoriums are able to stay open to the public, although the final decision on that matter will rest with the relevant burial authority. That is the main content of the amending regulations.

I will now touch on future amending regulations, which are linked very closely to the discussion that the committee has just had with the Deputy First Minister. Last week, the Scottish Government published a paper setting out its thinking on how future reviews should be carried out. The paper set out the criteria and factors that should be considered, and the framework on which decisions might be based. It is a key focus for the Government in shaping a response from here on.

The First Minister has been clear that we want to be open and transparent about the options for Scotland. We will continue to revisit this issue in the coming days and weeks as we develop the approach. Our assessment framework will inform the required reviews of the lockdown regulations and the collective assessment and decision making with the UK Government and with other devolved Administrations, where possible.

I hope that that was a helpful explanation, and I am happy to answer questions as best I can.

The Convener: That was a very helpful outline of the provisions that are in the regulations.

I have questions on the impact on businesses of the regulations and, in particular, the requirement for them to implement social distancing measures. The regulations are now being extended so that the requirement for social distancing will apply to all businesses that are open and powers will be given to local authorities and the police to impose fines on businesses that do not follow social distancing rules properly. Two questions arise from that. First, why did the initial regulations restrict that requirement only to certain business and not apply to all of them, and why is it now necessary to extend the requirement? Secondly, is there evidence that there is a problem with businesses not complying that has required amending regulations to be brought in that give powers to impose fines?

Michael Russell: If you cast your mind back to the start of this process, you will see that the issue of social distancing has grown in importance from then to now.

The reason why not all businesses were included to begin with was probably simply that we were dealing with where we expected people to be at that stage of the lockdown. However, some businesses have now reopened—there are a number of examples, including hardware stores and a number of other businesses—and people have returned to work. They can do that only if it is safe to do so.

Hygiene is obviously extremely important, as is social isolation if people have symptoms, but social distancing is one of the primary tools that will perhaps allow us to normalise this situation. Social distancing is not normal, but it will protect

people, and we want to ensure that they are well protected.

In response to the member's point about evidence of a problem, reassurance is also important. Constituency MSPs and other MSPs know that some people have complained about businesses and about having to go to work in circumstances that they felt were unsafe. The updated regulations give them reassurance. They are also a helpful guide to businesses, so that they know what they need to do to be able to operate in an effective and safe manner.

The method of enforcement is important, too. It is primarily local authority environmental health and training standards offices and the Health and Safety Executive that will be looking at businesses, and they will be doing so in the context of safe working spaces. That is a wider issue that is being discussed by the four nations.

The Convener: That is a very helpful explanation of where we are.

Annabelle Ewing: I want to seek clarity from the cabinet secretary.

The regulations include additional tools, including fines and potential prosecution, which the cabinet secretary referred to. Perhaps my issue is only based on my reading of the phraseology. However, the policy note mentions the test for imposing fines and prosecutions as being that a business has “unreasonably” failed to secure social distancing. What happens if a business has “reasonably” failed to do so? That is not only semantics, because the underlying issue is that, if an employer cannot ensure that people can be kept apart by the required social distance of 2m, presumably their business cannot open, and if it does open and, notwithstanding all the best efforts that they take to try and make it work in their premises, it does not work, presumably the business cannot stay open?

16:15

Michael Russell: That would be absolutely true. If a business cannot operate safely, it should not be open—that is axiomatic—because the risk of not being able to operate safely is a risk to people's lives. A reasonable failure is nonetheless a failure, and it should not be happening.

Annabelle Ewing: Okay.

Stewart Stevenson: I have one substantive question, on auction houses. Will the relaxations in the provisions also allow private trading of animals between individual farmers? Particularly at this time of year, we see calves and sheep being traded in that way.

My other point is an observation. As someone who is coming to this relatively new—because, of course, as an eighth decader, I am excluded from Parliament—I am finding the depths of changes to changes to changes in the legislation quite difficult to follow, and the legislation.gov.uk website takes a long time to reflect changes to original legislation. Clarity is important. Is there any chance that we might see clarity in that regard? I hasten to add that this is not a new question, cabinet secretary.

Michael Russell: On the second issue, it is important that we prioritise the core messages. The detail is often not necessary to know unless people are in a particular circumstance. For example, the issue of money advice centres is relevant only to a comparatively small group of people—there might be demand for the centres, but only a small group of people are involved in their provision—so let us stick to the main messages. Those messages are stay at home, protect the NHS and save lives. How that is done involves ensuring that people are observing social distancing and that they are not going out. Those are the main messages that we want to be taken from these things and which we promote, and we will go on doing so.

It is necessary to make changes to regulations, just as it is in normal times. When regulations have had to be put together quickly, there are inevitably things that have to be changed, and I see small matters almost every day that are being dealt with. However, the main messages are inherently clear.

On the question of individual trading of livestock, my initial reaction is to think that that is not a regulated business per se. However, I would not want to say anything that is untrue or unhelpful, so thank you, Mr Stevenson—as ever, you have required more work from ministers and their officials. I shall ask that a response to that question be provided to you and to the committee. My initial reaction is that a private transaction is a private transaction, but of course the two farmers involved would have to observe strict social distancing.

Stewart Stevenson: Thank you.

Monica Lennon: Cabinet secretary, in your opening statement you mentioned that the regulations bring some clarity on access to burial grounds. There have been questions from the public about access to cemeteries aside from attending funerals, for people who might tend to visit a grave to lay flowers, particularly on an anniversary. You mentioned that that is still a matter for local authorities to decide about for individual cemeteries, but is there a general rule of thumb? Should people on their way to lay flowers on a grave, who are on their own or with their

family households, be worried that the police will stop them?

Michael Russell: That is a good question. I would be distressed to feel that the regulations were oppressive or made doing that difficult in any way. The principal regulations left the matter ambiguous, and it is important to make it clear that they do not lay a duty on the operators or owners of burial grounds to prevent people from doing that. That is a discretionary matter for them, and I suspect that they will want to make a judgment based on a variety of criteria, including their ability to staff those areas and make sure that social distancing is observed. There is no blanket ban, which is the interpretation that some were putting on the principal regulations.

To be straight, we would not want to have a blanket ban on people visiting the graves of their loved ones or any garden of remembrance. However, such visits must be done within the rules on social distancing and the bar on groups of people meeting together—that is, it would be with their immediate household only and nobody else, and it would have to be done carefully. As I have said, there is no blanket ban, and if the owners and operators of burial grounds and gardens of remembrance associated with crematoria consider that visits could be done safely, it would be possible to allow that under the new regulations.

Monica Lennon: Thank you for that very helpful clarification.

The Convener: As no other members have questions, we move to item 3. I ask the cabinet secretary to move motion S5M-21572.

Motion moved,

That the Covid-19 Committee recommends that The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 2) Regulations 2020 (SSI 2020/126) be approved.—[*Michael Russell*]

Michael Russell: I think that that might have been the first time that a statutory instrument has been moved virtually.

Motion agreed to.

The Convener: The committee will publish a report to Parliament setting out our decision on the statutory instrument in the coming days.

That was our last agenda item. I thank the cabinet secretary for joining us and I also thank members.

Meeting closed at 16:22.

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