



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Wednesday 3 June 2020

Session 5



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COVID-19 COMMITTEE

8th 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)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Wednesday 3 June 2020

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Murdo Fraser): Good morning and welcome to the eighth meeting of the COVID-19 Committee.

The first item on our agenda is to decide whether to take agenda item 4 in private. Are members content to do so?

Members *indicated agreement.*

Subordinate Legislation

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 3) Regulations 2020 (SSI 2020/164)

09:00

The Convener: Agenda item 2 is subordinate legislation. I welcome the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell, who will give evidence on the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 3) Regulations 2020. Members will have received a paper that provides background and procedural information.

I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): Thank you for having me back to the committee to discuss in more detail the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 3) Regulations 2020. The regulations amend the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, which we more commonly know as the lockdown restrictions.

On 21 May, the Scottish Government published the coronavirus route map, which gives an indication of the order in which we will carefully and gradually seek to change the current restrictions. It provides practical examples of what people, organisations and businesses can expect to see over time.

On 28 May, the First Minister announced the outcome of the third review of the restriction requirements that are set out in the principal regulations. The outcome of that review and the assessment of the evidence were that it was appropriate to move to phase 1 of the route map to easing lockdown. That covered a wide range of policy areas and necessitated some amendments to the principal regulations. The amending regulations that are before members today give effect to various aspects of phase 1 of easing lockdown.

On 28 May, the Scottish Government made amending regulations by way of the made affirmative procedure. Those amendments entered into force on 29 May, and the 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 decision to move to phase 1 necessitates a change to the restrictions on businesses and individuals. The amendments

include changes to add a new reasonable excuse for people to leave their home and take part in outdoor recreation. Other amendments allow that activity to be undertaken with members of one other household at a time.

There are also changes to the restrictions on businesses. Garden centres have been added to the list of businesses in part 3 of schedule 1 to the principal regulations, so they may reopen—indeed, many have. Other retailers are now allowed to make adjustments to their premises to prepare for reopening in a later phase of the route map.

The amending regulations also include some technical amendments that are concerned with how restrictions will be lifted. Those provide that restrictions will be terminated by regulation rather than directions, which makes the processes clear and more transparent.

There are further regulations to implement phase 1 of the route map. When it is appropriate, we will take steps to move to the next stages, but only when it is safe and scientifically secure to do so. I look forward to discussing those steps with the committee at future meetings.

The position is not guaranteed and is not irreversible. If it becomes clear that the current measures are not sufficient to protect public health, we will put in place further measures, including regulations where necessary. The committee would, of course, have a crucial role in considering and scrutinising those regulations.

I hope that those initial comments are helpful. I am, of course, open to questions.

The Convener: Thank you for that introduction, cabinet secretary. We will now move to questions.

I want to ask about the opportunity that the regulations provide to certain businesses that are currently closed to the public to take preparatory steps in advance of reopening to ensure compliance with physical distancing requirements on their premises once they are allowed to reopen. You touched on that in your opening remarks. Will you say more about the types of businesses or services that fall into that category and, specifically, what support and guidance the Government is giving them to make the adjustments that they need to make?

Michael Russell: Very clear guidance is available on two levels. There is background guidance on the Scottish Government website, which leads on to further guidance. Your question is important, because many people want to start preparing themselves and their workplaces to—*[Temporary loss of sound]*.

The Convener: Cabinet secretary, I lost your audio for a moment. Would you mind going back a little and starting again?

Michael Russell: Of course. Can people hear me now?

The Convener: Yes.

Michael Russell: Two levels of guidance are available—on the Scottish Government website and from other sources, including employers and employers' organisations. The biggest issue is when people can start to make preparations in order to move, not back to the old normal, but to a new normal, and to get back to work.

The route map gives clear indications of when things will happen. For example, the construction sector has agreed a plan, two sections of which will be implemented during phase 1 and the rest in phase 2. There are phases in non-essential office work, too. People need time to get ready. Many MSPs have been approached about that.

In phase 1, businesses that might be able to open and get back to work in phase 2 are allowed to prepare for that. For example, retail outlets should install screens, relocate tills and prepare for queuing to ensure that the requirements for social distancing and hygiene can be observed when they reopen.

The route map is a good guide. Anybody who can see from it that they could possibly reopen in phase 2 can begin to get ready for that. It does not guarantee when phase 2 will be; it says that the process will be continuous.

The Convener: Thank you. My second question relates to some of the issues that we saw at the weekend, which the First Minister expressed concern about yesterday. Particularly in rural areas, people were very concerned about the impact of large numbers of visitors who had obviously travelled substantial distances.

Today, the committee has regulations before it. The regulations are the law, so they are different from guidance issued by the Scottish Government. The guidance says that you should not travel more than 5 miles from home to take exercise, but that is not what the law says. Why has the Government decided not to put that into regulations at present and is leaving it as guidance?

Michael Russell: It is important to look at the situation in a way that says that we are all in it together. We all have a responsibility to find a way to move on. The Scottish Government and police approach—through the four Es of engage, explain, encourage, enforce—has been to encourage people to comply, only enforcing at the very end of the process, which has worked until now.

I think that we were all disappointed by some of the things that we saw, witnessed or heard about that happened at the weekend. The figures speak for themselves. Sunday was the worst day for dispersals over the entire process. There were 797 compliant dispersals and another 146 dispersals after warnings. That is unacceptable. Perhaps it was like the first day of the holidays, with people taking it too far and needing some time to adjust. On Monday, the First Minister made it very clear that, should that behaviour continue, we will have to consider putting the 5-mile distance guidance into absolutely firm regulations, and possibly the guidance on the number of people who can meet.

Common sense and restraint should be applied, but there is also the basic truth that lockdown has not ended. These are gradual, small steps out of lockdown, and if people accept and follow those steps and behave responsibly, we will be able to continue to take those steps over a period of time. If that does not happen, we will not be able to continue to take those steps, and it is possible that we will go backwards.

I should stress that the vast majority of people are observing the guidelines, but some people seem to be unwilling to do so. For the good of us all, we must insist that they observe them. At present, we are saying to people that they should not exercise more than 5 miles from their home. Five miles is not an absolute—it could be 5 miles and 1 inch; that is common sense—but people should not go out of their local area. If people meet, it should be limited to two households and not more than eight people, it must be done outside and they must use social distancing. By doing all that, we will move on and avoid a second spike of the disease, which we are all desperate to avoid and which would wreak havoc. The way to do that is to observe the regulations, and that is what we are asking people to do.

The police have a difficult job and they are moving forward with it. In my constituency, Calmac is enforcing the regulations on piers. We are trying our very best to make people realise how important this is. However, the option remains for us to come back to the committee with further regulations; if we have to use that option, we will use it.

The Convener: Thank you. Stewart Stevenson would like to ask a supplementary question.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I just want to explore the limit of 5 miles, both from my personal viewpoint and on behalf of many people who live in rural locations.

I have no shop at which I can buy food within 5 miles of where I stay. I have also—*mea culpa*—walked 12 miles on my daily walk, which took me

a wee bit more than 5 miles from home. I met a single person during that walk and spoke to them at a distance of probably 10m. Do you agree that it would be all but impossible to firmly and unambiguously plant a 5-mile limit in the legislative framework without creating a host of serious difficulties, particularly for people who live in rural areas?

Michael Russell: Yes and no, Mr Stevenson. The imposition of such a 5-mile limit would be ludicrous. My nearest shop is only open part time and is probably 4.2 miles from where I am sitting now. Of course, we are not talking about the part of the regulations that is about going for essential food supplies, where the restriction is that that should be done within the local area; we have never restricted that to within 5 miles.

Let us not confuse people by conflating two things that should not be conflated. We are saying that people should not go more than 5 miles for exercise and, if they are going out to socialise, it is also clearly desirable that they do not go more than 5 miles. You can take “5 miles” as being shorthand for “within your local area”, but you should keep in mind whether what you are doing is necessary.

For example, at the weekend, I heard reports of a large number of motorcyclists in Oban. They must have come from the central belt, which is more than 5 miles away from Oban. They were not in their local area and they should not have been there. We have to be very clear about that.

However, of course people should go for essential shopping. If I were to go for essential shopping from here, I would have to go more than 5 miles. That has never been part of the legislation.

09:15

Shona Robison (Dundee City East) (SNP): Good morning. I want to pick up on the issue of behaviours. You said that moving to the next phase is not guaranteed and that the situation is not irreversible. In response to Murdo Fraser’s question, you picked up on the First Minister’s strong comments about what we saw at the weekend.

Can you say more about how the Scottish Government will measure and monitor the impact of the amending regulations on the reproduction number as we approach the next review period? The anecdotal evidence is one thing, but whether the changes have an impact on the R number is quite another. How is the impact being measured? Will there be enough time to see any impact on the R number before the next review period?

Michael Russell: The calculation of the R number is complex and a range of factors go into it. The death rate is one factor, but there are many others.

There is a lot of data in the system as a result of last weekend. I quoted the police statistics, which are regularly updated. There is also material from Traffic Scotland and from sources such as the national parks. We can see data about road and transport usage. All those things go together to build up a picture of what is happening.

You make a good point: it is important to guard against merely anecdotal evidence. People are quite nervous at present and many people do not want to see scenes such as those that we saw, and they may, understandably, exaggerate things in their own minds. Decisions are based on hard evidence, where it exists, which feeds into the calculation of the R number.

Calculating the R number is complex. There was a presentation on that for party leaders and others—I do not know whether the committee has had such a presentation. It is important that people understand that the R number is a range and not an absolute.

You asked about how things feed into the process that we are engaged in. There is continual review of what is happening; we work to three-weekly milestones. If you look at the route map, as I am sure that you have, you will see the judgments that will be made about the epidemic status. It is the first line in the detail of the route map, and it changes from phase to phase. At phase 1, there is a

“High risk the virus is not yet contained. Continued risk of overwhelming NHS capacity without some restrictions in place.”

That is where we are now. It is important that people realise that.

At phase 2, the route map says:

“Virus is controlled but the risk of spreading remains. Focus is on containing outbreaks.

R is consistently below 1 and the number of infectious cases is showing a sustained decline.

WHO six criteria for easing restrictions must be met.

Any signs of resurgence are closely monitored as part of enhanced community surveillance.”

There is a very clear statement of where we need to be with the epidemic status, and of the criteria and conditions that will allow us to move to phase 2. There is a similarly clear statement of how we will move to phases 3 and 4.

Shona Robison: I assume that there would have to be some distilling of whether certain regulations or areas in which restrictions have been relaxed are the ones that cause behavioural

change. Did people just hear that there was an easing of lockdown? Has that, in itself, changed behaviour? Is there a need to tighten up the guidance about travelling no more than 5 miles?

The important change for many families has been the ability to meet another household outdoors, up to a maximum of eight people. That has been so important for families. However, it may not be that change that has caused some of the behaviour; it may be the 5-mile issue. How will the Government make sure that, in taking the next steps, we do not throw the proverbial baby out with the bath water?

Michael Russell: The next steps depend on the epidemic status, the criteria and the conditions. Calculations will take place—they are taking place—about whether those criteria and conditions have been met. Many things feed into the R number and into those calculations.

It is difficult. That is where judgment comes in—the First Minister has talked about that. It is difficult to say exactly what is affecting people’s behaviour. We must keep looking at that.

Behavioural science and understanding how people behave come into it, too. It could be that what we saw at the weekend was the result of a combination of exceptionally good weather and a sense of relief after 10 weeks of lockdown, and that those issues will now disperse. It might rain between now and the end of the year, although let us hope not—it is still a lovely day here in Argyll. However, we need to watch the situation carefully. I suppose that the minimum that we can say after the weekend is that our antennae are attuned to the issue and we will watch carefully what happens over the next few days and into the weekend. We hope that people listen to the clear message that we are putting out about the need to continue to observe lockdown with small easements—which is what we are talking about in the first phase—because that is absolutely essential.

Adam Tomkins (Glasgow) (Con): I have a number of questions about the regulations. As I understand it, they are already in force and are the law of the land but, until today, there has been absolutely no parliamentary scrutiny of or debate about them. Obviously, I welcome the fact that you are in front of the committee to answer questions about the regulations. You have just described them as making “small easements”, but they actually make fairly significant changes to the way in which people can live their lives lawfully. Yet, as I say, there has been no parliamentary scrutiny of or debate on the nature of the changes. Is that an appropriate way of making law for the people of Scotland?

Michael Russell: Normally it is not, but, as you and I both know, we are not in normal times and therefore we are taking actions that are abnormal. We hope to stop doing that as the situation eases and changes. We have had the same debate for the past 10 weeks. We have had to balance the issue that you rightly raise with the need to protect public health and save lives, and we are not out of that situation. The people of Scotland have worked incredibly hard together to get us to this stage, and we need to go on working incredibly hard to complete the task, a lot of which is still in front of us.

For my part, I am here at the first available opportunity to talk about the regulations. They came into force on Friday morning, and the committee is meeting today and I am here. The regulations will be presented to the Parliament next week and can be discussed then, and I am happy to discuss them at any time in between.

As you will have noticed, in the regulations, we are changing the way in which we move on from the measures to try to get some more scrutiny of that. I will report next week in the chamber on the wider issues in the coronavirus legislation, just as we have agreed—indeed, we accepted your amendment to the Coronavirus (Scotland) (No 2) Act 2020 on that issue.

It would be really good if we did not have to do this any more, but we still have to do it and we must do it as transparently and openly as we can. However, I accept your premise that we should not be doing it as a matter of course.

Adam Tomkins: I welcome those comments. The reason why I wanted to get them on the record is that there is too much of a risk at the moment that the current extraordinary circumstances in which we are operating will become the new normal, and we must not let that happen.

Let me give a specific example of my concern about something that should have been debated before it came into force. It is the excision or omission from the principal regulations of all references to “the emergency period”. When the emergency regulations were first made, in March, it was absolutely clear to everyone that they were to deal with a public health emergency; yet we now find that, without any parliamentary scrutiny or oversight, every reference to “the emergency period” has been taken out of the principal regulations so that they no longer read as if they pertain to an emergency—they read as if they govern what is being called the new normal. Will you explain why all those references to “the emergency period” have been removed and the thinking behind that?

Michael Russell: I would want to look at the regulations carefully, because I am unaware of what you have said. I do not dispute it; I am just unaware of it. My immediate reaction, though, is that these regulations amend the principal regulations, which still refer to the emergency. They are not, of themselves, the last word; they are amendments to the regulations that deal with the emergency. I am more than happy to confirm that they are to do with the emergency. The main regulations have to do with the emergency.

I absolutely accept that the regulations should not last a moment longer than necessary, and I have made that commitment on every occasion that I have addressed them. We are changing how we can withdraw the regulations, to make it more subject to scrutiny. With the best will in the world, I do not believe that we are doing anything other than what is required to be done at this moment. I see nothing sinister in any minor changes to the wording, because we are amending the main regulations, which are the emergency regulations. We have emergency bills. This is an emergency, and nobody doubts it.

Adam Tomkins: I accept the force of what you are saying, cabinet secretary—of course I do. We all understand that we face a public health emergency that is generating its own economic emergency and other crises in the economy and in society, to say nothing of the health service. However, we should not so easily give up on the fundamental principle that laws for the people of Scotland are made by ministers only after parliamentary debate and scrutiny, and not before it. It is really quite concerning to me that you do not seem to be aware of the fact that the principal thing that these amending regulations do is remove from the principal regulations every single reference to the emergency period. I would like to have chapter and verse from you and your officials as to exactly why that has happened and what its legal implications are.

Let me move on to an issue about which I am receiving an increasing volume of mail—

Michael Russell: Can I commit to writing to you on that? I do not believe that there is any strange, sinister, malicious or odd intent. I believe that it is to do with amending emergency regulations. However, I want to be clear myself—I do not want to be characterised as being unaware—so that there is no doubt that we are not doing anything other than amending a set of emergency regulations, and there is no other import to it than that. I will write to you on that matter. You asked for chapter and verse—I will give it to you.

Adam Tomkins: I am grateful, and I look forward to receiving that. Hopefully, that will be today, or at any rate—

Michael Russell: I cannot commit to it today.

Adam Tomkins: —before Parliament is invited to vote on the regulations.

I want to move on to an issue about which I am receiving an increasing amount of increasingly angry correspondence. It is a matter that you and I have debated before: the right to marry. I was very pleased that the Government accepted my amendment to the legislation that we passed a couple of weeks ago, which requires you and your ministerial colleagues to take steps with the registrar general to ensure that there is no disproportionate ban or bar on marriages or civil partnerships. However, I am being written to practically every day by people—not just constituents in Glasgow, but people across the country—who have paid attention to this debate and are finding that their registrars are still simply refusing to countenance even the possibility of people getting married.

What steps have you taken so far with the registrar general to put that right? What can I tell my constituents—and, indeed, the other people from across Scotland who have written to me—to reassure them that the matter is being taken seriously and that we do not have to wait until phase 2 or 3 for the law that we unanimously passed a fortnight ago to take effect?

Michael Russell: With the greatest respect, that is now in the document at phase 2, which is regarded as the safe place to put it. I pay tribute to you, in the greatest part, because you have pressed that issue very strongly. We agreed that the matter should be prioritised, and it is specifically referred to. In addition, I am aware of occasions—I have been made aware of one today, in fact—on which the registrar general has moved to ensure that the possibility of marriage is more widely available.

09:30

I will give an example. Some people arrive in this country to get married on a marriage visa, which can expire. The Home Office now says that the grounds for renewal of such a visa could include coronavirus, but I understand that the registrar general has decided to ensure that marriages in Scotland can be brought forward without an extension, so there is an easing in that regard.

I would continue to encourage people who want to get married immediately and who believe that they have the right to do so and that there are circumstances that mean that that should happen—as we have agreed—to contact the registrar general, or Adam Tomkins or their own MSP. However, marriage is now set out in phase 2

in our route map, and I hope that we can move to phase 2 as quickly as possible.

The Convener: Ross Greer has a supplementary to Adam Tomkins's first question.

Ross Greer (West Scotland) (Green): It goes back to a point of process. The changes to the regulations have been introduced in a way that avoids using the affirmative procedure. I understand why the Government should have the ability to do that, given the broad urgency of the current situation. When regulations are to be changed to increase the stringency of the lockdown for the sake of public health, I understand the urgency behind that. However, we are now in a position in which broader changes to regulations are being made to ease the lockdown.

I still fail to understand, even after the cabinet secretary's answer to the questions from Adam Tomkins, why this set of changes could not have been brought under the affirmative procedure to allow for scrutiny and a vote of Parliament before they are brought into effect. What is the urgency that means that the affirmative procedure is not an appropriate course of action?

Michael Russell: With the greatest respect, I think that it is because people are desperate to move on. If the First Minister was to say at some point—there is a three-weekly review under way; that is well established—“We would like to do this, but we have to go to committee first, so you'll have to wait a week until we do that,” I am not sure that people would react terribly well.

We are trying to consult on the regulations as quickly as we possibly can. We are entirely open about the content of the regulations; they are welcome, despite the fact that they provide for only small easements, and I can see no harm in them. Equally, however, we want to ensure that scrutiny is as firm and rigid as possible, and that is what we are trying to do.

The Convener: As Ross Greer does not have a follow-up question, we move to questions from Beatrice Wishart, to be followed by Willie Coffey.

Beatrice Wishart (Shetland Islands) (LD): I would like to go back to the events of the weekend. The regulations were published on Friday, but on Monday it felt as if they were up in the air again.

I pay tribute to the vast majority of people in Scotland, who have abided by what they have been asked to do. It is unfortunate that a few people caused problems—considerable problems—at the weekend.

The First Minister warned that restrictions might have to be imposed, and the Cabinet Secretary for Justice repeated that warning on the radio. Would that involve a blanket tightening of the rules, a

local lockdown in specific geographical areas or something else? I would like a bit more detail on that, please.

Michael Russell: We should not get ahead of ourselves. I associate myself very strongly with Beatrice Wishart's remarks about the vast majority of people having abided by the rules—that is as true in Shetland as it is in Argyll. The vast majority of people want to observe the rules and are doing so, and they are angry at the very few people—they are visible, but few—who are not observing the rules and are doing stupid things. For example, they are coming to visit their mobile home somewhere in the countryside when they should not be staying anywhere away from home, or they are travelling a very long distance to a beauty spot. They should not be doing those things, and people are angry at them.

We have some evidence from the police figures that there was more such behaviour—not outrageously more, but substantially more—last weekend than there had been on previous weekends. The previous weekend was a wet weekend, so the comparison with that weekend is not a fair one. However, there was more such behaviour last weekend than there was two weekends ago. That was contrary to what we wanted to see. We are talking about small easements, which were welcomed, but we did not want that to lead to behaviour that was outwith those small easements. That is the issue: the behaviour in question was outwith the easement that took place. It involved people travelling really long distances, more larger groups of people meeting and people not observing social distancing. In all those circumstances, we want to make sure that we look at all the options for moving forward.

It is clear that the police will want to continue with their four Es strategy, which is good. If the behaviour changes and those people who behaved stupidly at the weekend realise that their behaviour was stupid and do not behave in that way again, we can move forward.

I think that it would be hard to localise the restrictions. However, enforcement is an issue, and there might be some places where more enforcement might be required than was the case last weekend. That would be fully understandable.

At present, we need to take it a step at a time. We need to be honest with people, as we have tried to be throughout the current situation, and recognise that what happened at the weekend was a bit of a check and a bit of a shock, and that it should not happen again.

Beatrice Wishart: You have touched on the evidence and the data that were used to prepare the regulations. Could you expand on that? What

changes to that data might result in our being presented with new, tougher regulations? The Scottish Government has always been clear in its communications. Any changes would need to be strongly communicated. How might that be achieved?

Michael Russell: I go back to the route map, which is extremely important for all of us—it is a core document. We want the regulations that the committee is considering today to be observed, because they will be the new normal.

The criteria in the route map, which I read out in response to Shona Robison, are really important. In phase 1, the epidemic status is such that there is a

“High risk the virus is not yet contained. Continued risk of overwhelming NHS capacity without some restrictions in place.”

That is where we are. We need to tell people that that is the situation that pertains today, so we must behave with that in mind. The first criterion for phase 1 is:

“R is below 1 for at least 3 weeks and the number of infectious cases is starting to decline.”

That is where we are, which is good, but we must make sure that that continues to be the case.

The next criterion is:

“Evidence of transmission being controlled also includes a sustained fall in supplementary measures including new infections, hospital admissions, ICU admissions, deaths”.

We have seen that, so we are in that position, but, if we are to move on, we must observe some other things. We are in a situation in which we must ensure that that continues to happen and that things do not get worse.

As we consider moving to phase 2, we must ensure that the next set of criteria start to apply. In phase 2, the epidemic status is such that the

“Virus is controlled but risk of spreading remains. Focus is on containing outbreaks.”

The criteria are:

“R is consistently below 1 and the number of infectious cases is showing a sustained decline.

WHO six criteria for easing restrictions must be met.

Any signs of resurgence are closely monitored as part of enhanced community surveillance.”

In other words, the test and protect system must be in place.

All those criteria describe where we are and where we are moving to. It is not a case of “Bingo! We're out of lockdown.” It is a slow and sustained process. I think that the First Minister used the phrase “baby steps”. It is a case of doing the right thing slowly and in a sustained way. If it looked as though we were being pushed in the other

direction, action would have to be taken. The evidence does not yet suggest that that is the case, but there is cause for concern after what we saw at the weekend.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): The relaxation allows tennis, golf and bowling to take place, and that has really been welcomed. However, a number of constituents have asked me why we will not permit one-to-one coaching at tennis clubs or horse-riding centres, for example. They ask, if we can allow up to eight people to manage in a garden, and if we can allow people to travel a bit more, why we cannot allow professional coaches to observe all the guidelines in carrying out one-to-one coaching.

Michael Russell: I would want to seek more information on the precise reason. My initial reaction is that the issue might be the difficulty with social distancing and that there might be some questions in that regard. As you know, there is subsidiary guidance for a range of sports available through sportscotland, and I would want to know what that guidance says before I answer that question definitely. If you will let me, I will ask my officials to communicate with you on the precise reasoning behind that decision.

I am glad that the relaxation in relation to tennis and bowls is welcome. If you grow up in Ayrshire, you know that bowls is big, so I am glad that people are glad about that. That is useful.

Willie Coffey: I imagine that, when professionals deliver coaching services, we will totally trust them to apply the appropriate distancing guidelines. I do not imagine that the issue is about trust, so it must be something else. The numbers appear to be very small, so it seems reasonable that one-to-one coaching could take place—[*Temporary loss of sound.*—]—given that there could be up to eight people in a garden, for example.

Michael Russell: As I said, I would like to find out the reasoning for the decision. I know that individual sports are different, so we will find out about the matter and try to give you some reasoning.

Monica Lennon (Central Scotland) (Lab): I welcome the cabinet secretary back to the committee. Given that the regulations allow more businesses to begin preparations for a return to work, what guarantees can workers be given that they have recourse to refuse a return to work if they feel unsafe? What additional support can businesses expect to receive from the Government and local authorities in order to adapt to home working or to adapt their workplace?

Michael Russell: Those are really important considerations. You will recall that, during consideration of the Coronavirus (Scotland) (No 2)

Bill, I made some commitments to Colin Smyth on issues that he raised in relation to workplace protections and health and safety.

Workers have an absolute right to a safe working environment. There are no ifs and buts about that. It does not say that in the coronavirus legislation, but that is exactly what it says in other legislation that has been in place for a long time. Nobody who is being asked to return to work or prepare to return to work should go into circumstances that they regard as unsafe. They should make that clear to their trade union and to their employer. It is not a question of being forced to do that; they should not do it.

Environmental health officers have responsibility for inspecting premises to ensure that they are safe, which is a huge job at the moment. In many local authorities, that is being done by issuing checklists or guidance to ensure that safety measures are being observed, and reacting thereafter to a complaint. Most people can raise those issues with their councillors or directly.

Trade unions have a big role in being very active and representing people who are concerned and worried and who regard themselves as being asked to do something that they should not do. We want to ensure that they do not do those things. It is in the interests of individuals, companies, communities and society that unsafe workplaces do not open and cannot open, because, in these circumstances, unsafe workplaces would lead to transmission of the disease, which we want to prevent. There has to be a guarantee that that will not happen.

Most employers are responsible and will consult their workforce and trade unions to ensure that workplaces are safe, but, if that is not the case, there is an absolute legal right not to go to work. There is a role for local authorities and for the Health and Safety Executive in ensuring enforcement, and that will be strongly supported by the Scottish Government.

09:45

Monica Lennon: I am grateful to the cabinet secretary for his answer. I share his sentiments, and I acknowledge that the Scottish Government, the Scottish Trades Union Congress and a number of trade unions have worked closely together.

However, I was concerned by a report that was published by the University of Strathclyde, which got some coverage in the *Daily Record* yesterday. The report found that a very large number of contact centre workers are terrified of returning to work in an environment that they describe as being full of risks. It mentions a “toxic” mix of inadequate or impossible social distancing, a lot of

face-to-face contact, inadequacies of sanitation, ventilation issues and a “dread” of contamination from workstations, particularly in workplaces where there is a lot of hot desking. Many of the workers felt that home working is an urgent necessity.

I appreciate the cabinet secretary’s answer, the intention behind the regulations and the guidance that has been issued by the Scottish Government. How concerned are you and your Government colleagues that the reality is grim and dangerous for many workers in Scotland?

Michael Russell: There are a number of answers to that question. Sectoral guidance is being prepared with the STUC, which is good. There will be sectoral guidance for different parts of the economy and, if there are sectors that have a particularly bad set of practices, those will be picked up very quickly and acted on.

Forgive me if I keep referring to the route map but it is the right document to go to, because it says important things. The route map looks at what is going to happen with businesses, and the guidance for phase 1, which is where we are now, states that remote working is the “default position”; it says so in the first paragraph of the page on working or running a business. Therefore, remote working is what people should be doing, and any employer that thinks otherwise should be quickly disabused of that by trade unions, the Health and Safety Executive and local authorities.

The guidance also says that in phase 1

“Non-essential outdoor workplaces with physical distancing”

can resume. It says that, in construction phases 0 to 2 of the industry restart plan can be implemented, but that industry should

“consult government before progressing to phase 2”,

and it goes on to mention the preparatory work, which we have talked about. However, the route map says that even in phase 2

“Remote working remains the default position for those who can.”

It says the same in the phase 3 column, and in the phase 4 column it says that

“Remote and flexible working remains encouraged.”

Therefore, all companies should be thinking about how remote working can be supported. As members know, the Scottish Parliament has put out information for Parliament staff and MSPs about how remote working should work and how staff should assess their workspace. That is good practice, and I encourage other employers to do it. In the end, if any employer refuses to do so they must be subject to the rigour of the law. They are

not allowed to open at the moment. The guidance says:

“Non-essential indoor non-office-based workplaces resume once relevant guidance agreed”.

That is under phase 2, not phase 1.

Monica Lennon: I hope that we are setting a good example by showing that home working can be done productively.

I mentioned an article in the *Daily Record*. Someone else asked me to look at another article that was in the *Racing Post*—I am not a subscriber, but I have had a look at it. The article raises the issue of the reclassification of betting shops in England to “non-essential retail”, which means that they will be allowed to open in the middle of June. Does the Scottish Government have similar plans and, if so, what social distancing measures might have to be brought in for betting shops?

Michael Russell: I am sorry to tell you that I am not aware of that issue, but I will find out and get back to you. Betting shops are not on the list of premises that I have, but it could be that it is the case that they will be reclassified—I just do not know, and I do not want to mislead anybody.

Clearly, betting shops could not open without sufficient social distancing measures in place, including screens. However, I believe that there are screens in betting shops already. Like you, I do not take the *Racing Post*, and I do not go to betting shops habitually, but I know enough to know that there are screens. However, I will find out about that and get back to you.

Monica Lennon: I want to ask a bit more about social distancing. Given that the regulations permit the meeting of up to a maximum of eight people from two households, how will the 2m rule be enforced? I know that others have touched on that issue, but I have a scenario in mind that relates to the roll-out and implementation of the test and protect system. We know that contact tracing is a big element of that. A number of constituents and other people from different organisations have asked me what the consequences will be for anyone identified through contact tracing who is found to have been in close contact with people from other households. I think that I heard the First Minister say previously that the NHS alone holds that information. Can you provide clarity on the enforcement of that?

Michael Russell: The test and protect scheme is operational. Rather than my going into detail about the test and protect scheme, it may be useful for the committee to have a full briefing on it. However, as far as I am aware—I presume this to be the case—the data is entirely confidential. If there are concerns about the data being used by

others, I think that there is an absolute guarantee that it cannot be.

I would want to ensure that the people operating test and protect brief the committee in full about how it and contact tracing operate. That is not subject to the regulations at present, so I would want to ensure that you get the best and most up-to-date advice and information on it, if that is okay.

Monica Lennon: A briefing of that nature would be very helpful.

I will put a scenario to the cabinet secretary—it might sound hypothetical, but it is very familiar to all us—about being able to hug people you love. People are now seeing their parents, grandparents and children for the first time in ages. A number of people have asked me whether they can hug others if they practise good hand hygiene, wash their hands, have good cough etiquette—if they use a tissue and so on—and perhaps wear a face covering. What scientific advice is the Government receiving that says that people cannot hug their granny in those circumstances? Have you been briefed on that issue? How far away are we from re-establishing human contact and people getting a 10-second hug from their granny?

Michael Russell: I do not know, and I do not want to give people false information or hope.

The information that I have, and the regulations that we have, are very clear: people should practise good social distancing, apart from with immediate members of their household. If a person lives with their granny, there is no instruction that they cannot hug them. The issue is not hugging per se. The issue is bringing people together from different circumstances, which risks causing the transmission of the virus. Again, I am happy to ask that the committee be briefed on the full science on that.

However, we should be very clear and not confuse things at the moment. The slight easement of the lockdown is contingent on people strictly observing social distancing, no matter how difficult that is. The joy of having your granny or someone else you have not seen for a long period close to is one part of it, but people cannot do all the things that they want to do, given the risk of transmitting the virus. I want to ensure that you—as committee members and as individuals—have the best advice, so that is another issue on which I think that you should be given the scientific advice.

The Convener: Monica Lennon raises a number of interesting issues. I have had a range of scenarios put to me by constituents and others, and it is very difficult to answer on the basis of the guidance as issued. As MSPs, we cannot interpret the guidance for people and, to be fair, it is probably not reasonable to expect you to interpret the guidance for people either. However, I think

that it demonstrates the issues that we face. When we have guidance, it leaves grey areas, and people are being asked to make up their own minds, which can be difficult. I do not expect you to respond to that point immediately, but please do if you want to.

Michael Russell: You raise a very good point. There is often an expectation on us as MSPs. The odd person who watches me appearing at the committee such as this might come along and say, “Tell me what to do.” We have to explain to people what is in the guidance, and we have to have a commonsense view of it, but the guidance is simple and clear, and a lot of work has gone into making it simple and clear.

We can overintellectualise this. There is a modest, small easement of lockdown at the present moment, which allows some things to happen that were not happening before, but please observe it; otherwise, the virus will spread. It is the simplest message: stay at home and save lives. There are some very small changes to that, which are helpful to people, but there is still a long road to travel.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, colleagues and cabinet secretary. I return to the key theme of compliance. Let us consider the biggest risk of what happened at the weekend—the cabinet secretary has alluded to this. The vast majority of people, who are complying and doing the right thing, were angry, frustrated and disappointed, because they recognise that the longer this situation goes on, the longer they will not be doing all the things that they would otherwise have enjoyed doing with their lives. The biggest risk is that, if we lose the majority of folk, we have a very big problem.

I understand and very much take on board the comment from Police Scotland this morning that officers police with consent in Scotland. That is a hugely important and fundamental bedrock of our society, and I get that, particularly as a lawyer.

However, we are in the midst of a pandemic. Come the next review, what specific points will the Government take from the events of last weekend? We wait to see what happens this weekend and next weekend. In my view, it would perhaps be helpful to have a bit more clarity about the 5-mile limit, irrespective of whether we move to being more prescriptive about it. My understanding was that the consideration was whether, if you were seeing a family member, you needed to have a rest stop—so that you did not go into their house to use the bathroom. That was one thing that I took from the guidance. If that is not the right takeaway, it would be helpful to get a clear steer as to what the 5-mile limit means. It seems that it may mean different things for different people.

Obviously, it did not mean going out to Loch Lomond, spending the day there and parking up the side of people's houses and so on. It clearly did not mean that. However, I think that a bit more clarity would be important to ensure that we keep the vast majority of people in Scotland on board, which they have been from the start.

Michael Russell: I will start on that last point. The vast majority of people in Scotland are on board, they want to stay on board, they are angry at those people who do not appear to be on board and they want to get them back on board. That is what we all want.

The police are absolutely right to say what they did about policing by consent, and it is very important that people are persuaded.

Let us be clear about what the regulations say, however. Let us deal with the questions of exercise and getting together, if I can put it that way. It is clear that you can now go out and take exercise, but you should really stay in your local area. The 5-mile thing is a guide to what your local area is. If you live in Dumbaron, that does not include the Falls of Falloch, where there was a huge number of people at the weekend—those falls do not fall within 5 miles of any population centre. There are issues there about how things should be done. Five miles is a guide but, as Stewart Stevenson quite rightly said, if someone lives 10 miles from anywhere and they need to go shopping, that is a separate issue.

Then there is the issue of getting together with people. An issue that emerged over the weekend was the number of people in some gatherings, and there is a question about how we deal with that. It should be two households only and a maximum of eight people. The First Minister was quite clear that, although people may go a bit further, they should not be travelling the length and breadth of the country. One could say that they should not be doing a Dominic Cummings; they should not be travelling 250 miles, not least because it would be difficult not to use facilities that they perhaps would rather not use in the circumstances.

10:00

These are minor easements, which people should be pleased about. If they are exercised responsibly, there is no problem and it means that people can move on from where they are. However, some people have exercised them irresponsibly—for example, in the pictures that we have seen of beauty spots on weekends. That is not the right way to behave and it is putting people's lives at risk. The bottom line is that it is about the ability of the virus to spread and we must avoid spreading the virus.

Annabelle Ewing: I totally agree with the cabinet secretary's final comment. Earlier, he reiterated the context in which the legislation has been introduced, which is that we are in the middle of a pandemic the like of which we have not seen in our lifetimes.

That is an important message to repeat again and again. With the easing at the weekend, people were desperate to do something different and a bit more normal. With the nice weather—it is fairly nice today and, although the weather might not be as nice as last weekend for a wee while, it will be okay—there is a danger that people just think, "You know what, we are outdoors in the fresh air in Scotland—it will be fine." The tone of the public health message on that is therefore really important—as is our position on face coverings, which I want to discuss.

I was at the supermarket last night, and I think that I was the only person wearing a face covering in the entire shop. We need to reflect further on our messaging on that; I know that our message is that people should be using face coverings, but evidently most people are not yet doing it. That is an issue of tone, because if it is something we should all be doing, it changes how we think about it.

Michael Russell: I agree that the issue of face coverings is moving to centre stage. I noticed that, when wearing a face covering at a filling station, I was the only person who was doing so. We all need to do it, and there is a lot of thinking going on about that.

I encourage people to wear a face covering, including when they are in shops. People might think that they will be stared at or looked at, but we should get to the stage where everybody is doing it, so that a person who is not doing it is the one who is stared at.

You are right: we need to look at the issue seriously. There has been a debate about the efficacy of face coverings, but there is a growing public view that we should be using them more.

Ross Greer: As has been mentioned a couple of times this morning, my constituents in Loch Lomond had a horrendous weekend. For example, the stories from Luss were widely reported and shared by many people, including the First Minister. Proportionately, its population is elderly and, although up until now Luss has not had cases of the virus, they are now terrified that it was brought into the community over the course of the weekend. However, it is not just the virus, as there was a lot of extreme antisocial behaviour over the weekend, with people defecating in gardens, for example. It was horrendous for them.

I am interested in the connection between those events, which unfortunately were not isolated to

Loch Lomond, and the timing of the Government's announcement. With an announcement about the easing of lockdown, there is a requirement for nuanced messaging and the reinforcement of that nuance before it sinks in. Making such an announcement immediately before the weekend, particularly when the weather forecast was so good, increased the likelihood of what we saw in Luss.

Could the cabinet secretary explain the rationale for announcing the easing of those lockdown measures immediately before a weekend, rather than waiting to announce it earlier the next week, which would allow for repeated reinforcement of the important public safety elements of the message before the weekend?

Michael Russell: It is an interesting point, and I will need to reflect on it.

The three-week review period comes to an end on a Thursday, and there is a strong expectation that a decision will be made on that Thursday. Given the length of time that people have been in lockdown, we have been trying to help them as much as possible to move on, even in a limited way.

Therefore, my only reaction is that the point is well made and I want to think about it. I do not know what the views of the First Minister and others would be, but the point is worth thinking about. It is a takeaway from this discussion, and I thank you for it.

For instance, if we were to make an announcement on a different day, I do not know whether people, on the assumption that it was going to happen anyway—[*Temporary loss of sound.*] There was an increase in that kind of activity and behaviour over the Easter weekend and at the good weekend two weeks ago. The figures show that, although there were more people last weekend—[*Temporary loss of sound.*] It is part of the discussion, and I am grateful for the question.

Ross Greer: I am grateful that the cabinet secretary will bear that in mind in future.

Stewart Stevenson: I have questions on three comparatively small issues.

The biggest of the three is the issue of children, which we have not heard about in this discussion. Schools go back on 11 August, which is fine, but I am exercised by the problems that are faced by children who are in households where a parent is shielding. I am in my 12th week of lockdown, which is 0.3 per cent of my life. For the eight-year-old in my close family, that is 3 per cent of her life and she has met no other children in that period. It is an onerous issue, and I can identify no solution, but I invite the cabinet secretary to find something

that addresses it and helps children in that situation.

I know that my close family member's mental health is fluctuating more than I would like, because she is shut away with two parents in a house with no garden. We want to put children centre stage. It is great that schools are returning on 11 August but, in the child's mind, it is an incredibly long time away and there is no prospect of anything approaching a summer holiday. I have no expectation that you have a magic answer, but I would like you to acknowledge and take away that ask.

To make the best use of the time, I will also deal with the other two issues.

In a sense, the second issue is also an ask. Some numbers and boundaries are inevitably arbitrary but we have to have them somewhere. At the moment, we categorise people who are 70 or over as vulnerable, and I am such a person. Some other countries have drawn the line at 75, rather than 70. If we look at the outcomes for people who become infected with Covid, we can see why 75 might have been chosen, because outcomes become particularly adverse as people move towards 80. Is the Government asking for or receiving advice that might lead to it considering pushing that 70 back a bit?

My final question is on a very specialist and small issue, although it will be of interest to the convener because I was approached on the subject by someone in the area that he represents. I think that I am the only person in the Parliament who has a pilot's licence, and I have heard a plea from a number of people to be able to resume solo flying from and back to the airport of origin. Why is that important for that small minority of people? The answer is that a pilot's ratings and licence may become invalid if they do not do some flying.

If someone is flying on their own in an aircraft, they may be flying out of an airfield where there is nobody else present. The situation is just not referred to in the guidance—I have the Scottish Parliament information centre advice on it, which is perfectly clear. It is one example of a broader issue, and in looking at further iterations of regulations on general solo activities, we might consider taking some more helpful positions on particular activities if appropriate.

Michael Russell: Stewart Stevenson makes three very good points; let me address them in order.

Mr Stevenson makes an absolutely tremendous point on children and shielding, which needs to be borne in mind. I undertake to share it with my colleagues the Deputy First Minister and the

Minister for Children and Young People to see what additional thinking can take place.

The wider issue of mental health is important and we are all very aware of it. We are aware of our own reaction to the current situation, and we know that it is a difficult time for all of us. We all receive emails and messages from people who are clearly struggling, and although there has been a commitment to supporting of people with mental ill health, we should bear in mind that one of the criteria that we have to consider as we look at the effect of lockdown is the long-term mental health of individuals and how we can help with that. It is a really good point; let us take it on.

The point about people over 70 is also well taken. There has been variation in different places, and one or two places say people who are over 65 should be shielded, which would bring me into it. I know from my correspondence that some people over 70 are annoyed about the approach because, for example, they are not allowed to volunteer to drive because they are shielded. They want to volunteer in their communities and be allowed to do the things they want to do.

We should remain sensitive to the issue. As with all categorisations, not everybody over 70 is the same and not everybody over 75 is the same. That will be under continual thought and review. We are where we are in this phase of the pandemic, but I think that we should—[*Temporary loss of sound.*]

As for the issue of the pilot's licence, the amazing richness of human experience never ceases to amaze me. There are people who want to be allowed to do things in almost every area of life, and sometimes we do not know they are doing it until they write to us about it. Solo flying is therefore an area that we need to look at. We need to understand how many people are affected, what the risks are and whether it could happen without difficulty.

I am surprised to hear that solo flying is not happening. I know that gliding has been an issue on which representation has been made. There have been lots of representations about sailing, and if people have a boat they now have the ability to go sailing with a member of their family, as long as they do not travel too far to a marina or go ashore and do lots of things.

If solo flying is not being looked at, I will take it away and ask somebody to look at it.

The Convener: I think that Stewart Stevenson has exhausted his questions. Willie Coffey has a quick final supplementary question.

Willie Coffey: Is the Government thinking about or planning safe exercise spaces or dedicated time slots for our shielded groups to enable them

to get out and get some fresh air and a bit of exercise? I know that some communities in Ireland are doing that, and it seems to be most effective when dedicated time slots are offered for the exclusive use of shielding groups to walk in parks and open spaces.

10:15

Michael Russell: I know that the First Minister and the chief medical officer are considering, with advice, the issue of how we can help people who are shielding to move on. The issue has been in sharp relief in relation to the decision of the United Kingdom Government. We have made it clear that those changes are not being implemented in Scotland at the moment. However, the First Minister has made it clear that she wants to say something about shielding as soon as she can. I hear what Willie Coffey is saying.

The Convener: We have gone through all the questions, so I thank the cabinet secretary for his evidence.

We move to item 3 on the agenda, which is the formal consideration of the motion. I invite the cabinet secretary to move motion S5M-21871.

Motion moved,

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 3) Regulations 2020 (SSI 2020/164) be approved.—[*Michael Russell*]

Motion agreed to.

The Convener: The committee will publish a report to Parliament in the coming days setting out our decision on the statutory instrument. I thank the cabinet secretary for his attendance.

10:17

Meeting continued in private until 10:44.

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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