



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# COVID-19 Committee

**Thursday 20 August 2020**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Thursday 20 August 2020**

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**COVID-19 COMMITTEE**

**13<sup>th</sup> 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:**

Clare Adamson (Motherwell and Wishaw) (SNP) (Committee Substitute)

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP) (Committee Substitute)

Jeane Freeman (Cabinet Secretary for Health and Sport)

Liam Kerr (North East Scotland) (Con)

Ruth Maguire (Cunninghame South) (SNP) (Committee Substitute)

Luke McBratney (Scottish Government)

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

Rebecca Whyte (Scottish Government)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Virtual Meeting



## Scottish Parliament

### COVID-19 Committee

Thursday 20 August 2020

*[The Convener opened the meeting at 09:30]*

#### Interests

**The Convener (Murdo Fraser):** Good morning, and welcome to the 13th meeting in 2020 of the COVID-19 Committee. We have received apologies from Annabelle Ewing, Shona Robison and Willie Coffey, who are attending other parliamentary committees. Ruth Maguire has joined us as a substitute for Annabelle Ewing, Alasdair Allan has joined us as a substitute for Shona Robison, and Clare Adamson has joined us as a substitute for Willie Coffey. I welcome them to the meeting. Liam Kerr has also joined us as an additional member.

I ask the substitutes to declare any registrable interests that are relevant to the committee's remit.

**Ruth Maguire (Cunninghame South) (SNP):** I have no interests to declare.

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** I have nothing specific to declare, but I refer people to my entry in the register of members' interests.

**Clare Adamson (Motherwell and Wishaw) (SNP):** I have no interests to declare.

## Subordinate Legislation

### Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 (SSI 2020/234)

09:31

**The Convener:** We turn to the substantive business on the agenda. This morning, we will deal with a number of statutory instruments. For our first evidence session, we are joined by the Cabinet Secretary for Health and Sport, Jeane Freeman—who will give evidence on the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020—and officials. Paul Cackette is director of the Scottish Government's outbreak management, and Luke McBratney is the lead on transition, constitution and rights. I welcome you all to the meeting and invite the cabinet secretary to make an opening statement.

**The Cabinet Secretary for Health and Sport (Jeane Freeman):** Thank you, convener, and colleagues.

I start my short opening statement by paying tribute to the extraordinary hard work on the ground that is being undertaken in Aberdeen city to bring the outbreak there under control. The drive and rigour with which the local incident management team, NHS Grampian and Aberdeen City Council have led that work have been exceptional. In particular, the contact tracing, which has led to 1,141 contacts being identified, traced, contacted and given advice, has been recognised by everyone as being world class.

Those measures are working: they are bringing under control what is by far the most serious local outbreak in Scotland since the lockdown began. However, although there are positive indicators, the activity rate per 100,000 among cluster cases is 37.2, and is still over 20—it is 22.7—among cases that are not related to the original cluster. That is high. The rate across the rest of Scotland is 6 per 100,000.

Our testing and tracing is still reporting a significant number of new infections that are not connected to the pubs and nightlife cluster. That means that we cannot be sure that community transmission is not taking place.

Our clinical advice from the chief medical officer and Public Health Scotland is that we cannot currently say that that outbreak is sufficiently under control, and we cannot describe the risk in relation to community transmission as acceptable. For those reasons, the judgment of ministers is that we cannot immediately lift the restrictions in Aberdeen city.

To be clear, I point out that the local incident management team did not argue for an immediate lifting of the restrictions from 19 August, and neither did Aberdeen City Council. What both wished for was that non-licensed premises could be opened from this weekend. We all agreed that we are now looking forward to lifting those restrictions, and to doing so in a deliberate, phased and cautious way. We take account of all the views that are expressed to us. We recognise that these are difficult decisions and that the leadership of Aberdeen City Council and other local authorities have been, and must continue to be, involved in the decision-making process.

From what we know about the disease, it is important to be able to analyse the cumulative impact of restrictions after around the two-week mark, so as to understand properly the extent of progress and how sustainable it is. We are getting detailed daily information on the outbreak, and yesterday marked two weeks of restrictions in Aberdeen. For that reason, we have suggested that there be another meeting with clinicians, councillors and officials on Sunday to review progress.

Although I cannot pre-empt that discussion—we will need to look at the data that is before us at that point, including the daily data up to that point—I can tell the committee that, dependent on progress, the sort of measures that we expect to consider include permitting hospitality without the serving of alcohol from next Wednesday, and the publication of a clear route map for lifting the remaining restrictions, beyond that.

Of course we recognise the impact on businesses in the area, but the impact of an outbreak going out of control in Aberdeen and across the north-east would be much more severe, both for business and for public health. We are providing additional support to business in Aberdeen through the £1 million package that was announced yesterday.

I think that we are taking a measured, proportionate and responsible approach that is consistent with that which is being taken to suppression of the disease across Scotland. The overall objective is shared by the Government and the local council: it is to get the restrictions lifted as soon as possible. However, we must not do anything that jeopardises the significant and hard-won progress that has been made so far. As with all the decisions that we make during the pandemic, we are informed by the evidence and we then make the necessary judgments.

**The Convener:** Thank you, cabinet secretary. We now move on to questions. I highlight to you and your officials that we need to bear in mind the slight lag in broadcasting, so do take a breath before you answer a question, which will allow the

broadcasting team to switch microphones on. Secondly, if you wish to bring in officials at any point, it would be helpful if you could first indicate that verbally to the broadcasting team, then your officials can pause for a moment before they speak. That will allow broadcasting to switch the microphones on, so that we do not miss the first few words of what is being said.

I will start by asking you about the issue that you have just alluded to: the announcement yesterday that the restrictions will be extended for a period. There has been a lot of comment around that, and you will have seen some of the reaction locally that has been reported in the media since yesterday, including concern from Aberdeen and Grampian Chamber of Commerce about the extension to the restrictions. How does the Scottish Government weigh up the various issues, including short-term health risks from Covid, longer-term health risks from the extended restrictions and the economic risk of extended restrictions? How does that equation work?

**Jeane Freeman:** I wish I could give you a simple mathematical equation as an answer. Unfortunately, no such thing exists.

In every outbreak, we have to be able to take different decisions, depending on the nature of the outbreak—how it has started, how it is spreading, the geographical area, what the evidence from contact tracing is telling us, and what the evidence is telling us about the seven-day rate of cases per 100,000. We take all those into account, together with clinical advice and views. The incident management team—IMT—is a coming together of people from more than one area of expertise, and its members are on the ground locally and therefore have particular and important perspectives to contribute. After looking at all that information, and taking into account our chief medical officer's and national clinical director's assessments of what they see in the data, a judgment is made.

I would not characterise the health risk from the virus as “short-term”—I gently dispute what the convener said in that regard. The health risk from Covid-19 is very serious; it is potentially life threatening, as we have seen. The virus also produces long-term health impacts, which we are only now learning about, and will continue to learn about, globally. That is a serious risk to which we must pay close attention.

As you know, we are trying to reduce the level of the virus in Scotland to its lowest possible status, and then to keep it there. Inevitably, because people are out and about more and the virus has not gone away, as we ease restrictions the incidence of the virus will increase. That is where outbreak management, test and protect and the local IMT-led exercises become critical to us.

Knowing how they are doing allows us to make a judgment about whether restrictions can be lifted in any particular instance. As I said in my statement, it takes about two weeks for us to see whether what we have done has had an impact on the incidence and prevalence of the virus in a community. We know that from having imposed lockdown restrictions previously.

At the end of the day, the data is there and everyone can see it, but the judgments that are made have to take all the factors that I mentioned into account. I know that you would not question this, but I note that none of those decisions is taken lightly. As has been the case so far, decisions that we make about what we will do differ from outbreak to outbreak.

**The Convener:** Thank you, cabinet secretary. Your response was very helpful.

In your opening statement, you alluded to the views of Aberdeen City Council and you referenced the fact that both the council and the local incident management team were recommending greater relaxation of the restrictions than are proposed in the instrument. Why, do you think, are you and your team in Edinburgh better placed to make decisions about what is happening in Aberdeen than people there on the ground, including health professionals in the IMT?

**Jeane Freeman:** To be fair, I say that that is a slight mischaracterisation. The incident management team argued that, on balance, it believed that it could be possible to open non-alcohol-related hospitality from this weekend. That was also Aberdeen City Council's position. I have mentioned the rate per 100,000, which is an area of concern in relation not only to the cluster cases, but to other cases that are not related to the cluster. We are seeing not only the cluster related to night-time hospitality, but other cases that are not directly linked. On that basis, the judgment that we made was that this weekend is too soon.

However, taking account of the views of the IMT and the council, we said that we should meet again on Sunday to consider whether, if all the figures keep going in the relatively positive direction that they have gone so far, it is possible to say—I cannot pre-empt that—that from next Wednesday, non-alcohol hospitality can reopen and a clear route map for easing and lifting all other restrictions can be set out, so that people know what they are working to.

We appreciate that going from one week to the next without knowing whether a business will be able to open simply adds to the difficulty—which we completely accept such businesses and others are experiencing. From my portfolio, I know that that is the case for our care homes, because we

have not permitted care homes in Aberdeen city to extend their visiting for residents to the degree that we have permitted elsewhere. That is a serious situation and a real difficulty for families and residents.

09:45

Hospital visiting has not been extended either, so I completely understand the concern about that and the impact of our decisions. However, on balance, our strong view is that lifting any of the restrictions poses too great a risk at this point because we still have to see a few more days of positive data coming through, which I hope will show the rate per 100,000 coming down.

**The Convener:** Thank you, cabinet secretary. I know that other members want to come in to talk about this issue a little bit more.

**Monica Lennon (Central Scotland) (Lab):** Good morning, cabinet secretary. I would like clarity, because the convener is right that there has been a lot of comment in the past couple of days. Certainly, there has been local reaction from authorities and from people living in Aberdeen city and the wider Grampian area. Is there a disagreement between the Scottish Government and the local partners' incident management team? Has there been a row? If that is not the case, why does it appear to be so?

I think that we would all agree that that would not be great for public confidence. People need to have confidence in the data that they hear about and read about, and they need to know that everyone is working together. Can you unpick some of that and tell us what has been going on and whether people are going to get round the table quickly to try to sort it out?

**Jeane Freeman:** Thank you, Ms Lennon. That is a really important question. I did not, having been in the discussion, witness or hear "a row". I heard the IMT and the city council expressing the view that they believed that it was possible, on the basis of the data that they were looking at, which was the same data as we were looking at, to open non-alcohol-related hospitality from this weekend.

That was not a judgment that we shared—and it is a judgment. As I said to the convener, there is not a binary position in any outbreak; there are a range of factors to take into account. I know that Ms Lennon understands that.

I would not characterise that as "a row". I would characterise it as, entirely legitimately, people looking at the same information and reaching different judgments. That is why we have collectively taken the decision to reconvene, probably on Sunday, to look at the latest data that will cover the days since the beginning of the

week. We hope to see a continuing reduction in the number of cases, a continuation of the real success of test and protect and a steady reduction in the rates per 100,000, particularly in the non-cluster-related cases—the ones that are not directly related to the night-time hospitality cases. We have a degree of confidence that we have captured all those factors.

The decision to meet on Sunday is a compromise because of the two different judgments. I hope that it will allow us, if we see the right progress, to say that non-alcohol-related hospitality can open from Wednesday, and to set out the route for all the other restrictions to be lifted and the outline timeframe for that. I cannot pre-empt where we will be on Sunday, but that is the intention. That is about trying to ensure that people in Aberdeen city in particular get increased clarity about what they can expect and when they can expect it.

**Monica Lennon:** I thank the cabinet secretary for that answer, which was helpful. In the interests of transparency, will the Scottish Government publish the recommendations that came from the incident management team?

I will ask one further question, convener, the answer to which will depend on what happens on Sunday. Clearly, there is a dip in confidence among the business community and employers in Aberdeen; we heard that from them on the radio this morning. If the Government is minded to continue the restrictions, will it therefore commit to providing further support to employers and sectors that feel that they are at crisis point? Will the cabinet secretary provide an update on that?

**Jeane Freeman:** As I am sure that Ms Lennon understands, that area of Government is not in my portfolio; however, I know that Ms Hyslop and her officials have engaged consistently with the business community in Aberdeen. An additional £1 million has been provided, and I know that Ms Hyslop will be open to any further discussions that the business community wants to have with her. We will see where we get to over the course of the coming days.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** First of all, I welcome the indication that there will be an interim review meeting on Sunday. I am sure that there will be customers in Aberdeen who will want to use the facilities that have the prospect of reopening. However, in Aberdeenshire—which constitutes the overwhelming majority of my constituency—the people who I have been meeting are extremely cautious and simply will not return to businesses in Aberdeen until they assess that the infection risk has come down.

How is the cabinet secretary considering the impact on the general public of the number that she has given of 37.2 per 100,000, which compares with 6 in the whole of Scotland and shows that we still have elevated levels of infection in Aberdeen? My constituents are extremely cautious about that and, even if everything opens up next week, I do not think that a flood of them will go there. Is there a danger from that disconnect between the actions that we have to take in balancing commercial needs and health needs, and the wider view in the community that makes it more cautious? If the Government gets ahead of the community, is there a danger that that damages confidence in the Government's overall messages and those that come from health professionals?

**Jeane Freeman:** Mr Stevenson is right in general terms in as much as that, if any Government gets ahead of where a community is, that is not the right place for a Government to be; equally, lagging behind the community is not the right place for a Government to be.

The way in which we try to lead in that area is to set out the issues that we are looking at and the balance that we are trying to strike, and to absolutely recognise that those decisions can be hard to thole for those on the receiving end of them, and that they are difficult to make. However, our rationale and our intention in making them is to try to suppress the virus overall.

The public will hear that and will reach their own judgment about whether what we are doing as a Government makes sense to them. We are very mindful, as we have been from the outset, of the situation in Aberdeenshire and Moray. We are keeping a careful eye on that to ensure that we do not see any significant spread into the geographical areas surrounding the city. That was part of the reason for the five-mile restriction, whereby we are asking people not to travel more than five miles for leisure purposes—obviously work and education are a different matter. We wanted to limit travel but not to overimpose travel restrictions. We are very mindful of the to and fro from the surrounding geographies to any city—in this instance, Aberdeen. We are trying to control the situation in the city, and ensure that it does not spread exponentially outwith the city and therefore affect residents elsewhere.

**Beatrice Wishart (Shetland Islands) (LD):** Where do students feature in the Government's plans on local lockdowns? We know that the student population will be making moves to return to Aberdeen, or even to arrive there for the first time, and that will include many students from Shetland. How will local lockdown measures take account of that?



**Jeane Freeman:** That is a really important question. We are very conscious that significant numbers of students from across Scotland will shortly arrive from other parts of Scotland, the rest of the UK, Europe and much further away. The Deputy First Minister is in the lead here, along with Mr Lochhead, and my officials and I are also working with Universities Scotland on an overall plan for the restart of further and higher education. That plan looks at testing, how we can support students coming from countries that have a quarantine requirement and what more we can do, together with Universities Scotland, individual universities and colleges, to provide students with consistent and accurate information about what we require of them and what they need to do, regardless of where they come from, and where they can get help and support through their university or college.

For particular lockdown restrictions that may apply to any area in Scotland at any point, all those living in that area will be expected to comply, and that will also apply to students. If we get to a stage—we may not do—where restrictions are in place and the universities and colleges in Aberdeen city are restarting in that their student population is arriving, we will work with the university and colleges to ensure that they are giving their students accurate information about what they are expected to do as people living alongside the citizens of that city. That is how we would undertake that work. We are working very hard in the knowledge that students across Scotland are arriving imminently.

**Beatrice Wishart:** That is a very helpful response. My final question is about other council areas being informed about the Aberdeen city lockdown.

We have already referenced Aberdeenshire and Moray, but, given that we know that Aberdeen is Shetland's lifeline hub, were northern isles councils sighted on plans beforehand? I am aware from what I have heard anecdotally that some patients from the northern isles have cancelled appointments that they had in Aberdeen. Will the cabinet secretary comment on that please?

10:00

**Jeane Freeman:** I apologise, Ms Wishart—I cannot confirm that, but I will check what information was sent to other local authority areas about the decisions made for Aberdeen city. Obviously, Aberdeenshire Council was engaged in discussions, but I cannot absolutely confirm what information was sent more widely than that and I would rather be sure, so I will double check that and make sure that Beatrice Wishart knows.

It is important to remember the interrelationships between our different local authorities and, more importantly, that people move from one local authority area to another for work, family or other purposes. I have not had any information that patients from the Orkneys had cancelled appointments. There was no reason to think that hospitals in Aberdeen were any less safe because of the restrictions; measures taken in those hospital settings are as comprehensive and effective as anywhere else. I will speak to NHS Grampian and all our boards, because we do not know whether we will face a comparable situation elsewhere at some point, to make sure that they are giving good information to patients that is accurate and, when it needs to be, reassuring.

**Dr Allan:** Obviously, there will be interest in how the rules work in Aberdeen should they need to be operated elsewhere in future, although we hope that they will not. What is the cabinet secretary's view on how the rules will operate around premises that defy the rules? I am thinking particularly of fixed penalties. Can she give an assessment of how that will work and whether it is workable?

**Jeane Freeman:** Of course, Dr Allan knows that we have moved some of what was in guidance on to a statutory footing, particularly around contact tracing in relation to hospitality. The taking of contact details in restaurants and bars is really important, as is preventing standing at bars and ensuring 2m-distance queuing. Those are important measures and many premises across Scotland have complied with them from the outset; others have complied less, so we need to assist them to comply.

I know that Police Scotland will take the approach that it has taken throughout the pandemic, as it said it would, which is to inform and encourage but if necessary to enforce. I also know that Aberdeen City Council, through its environmental health department, has put, and is planning to put, a great deal of effort into contacting businesses to ensure that they completely understand what the guidance is and what the expectations of them are, and checking that they are being complied with. That is a very helpful exercise that the council is undertaking, as it should do, given its responsibilities in relation to environmental health.

**Dr Allan:** What are the options in relation to penalties for premises that operate in defiance of the rules?

**Jeane Freeman:** Do you mean the amounts?

**Dr Allan:** What are the determinants and the options for intervention for anyone who is operating an establishment?

**Jeane Freeman:** For someone who is operating an establishment that does not comply with what we require of them?

**Dr Allan:** Yes.

**Jeane Freeman:** I have both Paul Cackette and Luke McBratney with me on the line; they will, I hope, be able to give you an accurate response to that question. Perhaps we can go to Luke first.

**Luke McBratney (Scottish Government):** Ultimately, if a business contravenes an obligation that is imposed on it under the regulations, that is an offence. The regulations bolster that provision with a number of enforcement measures, including the ability to issue a notice requiring compliance with one of the obligations in the regulations and—as Dr Allan indicated—a fixed-penalty notice regime. As the cabinet secretary said, those measures are very much held in reserve; the principal method of enforcement is to provide encouragement and try to achieve agreement. Ultimately, however, contravention of the health protection regulations is an offence.

**Adam Tomkins (Glasgow) (Con):** Cabinet secretary, the preamble to the regulations states:

“The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve”.

Can you explain what you understand by the term “proportionate”, please?

**Jeane Freeman:** In this instance, “proportionate” refers to the restrictions that are linked to where the outbreak occurred. It is clear that the outbreak occurred in the hospitality sector and the night-time economy, in bars and restaurants. We have brought forward regulations to impose the restrictions that were agreed with the councils in the first instance. They include restrictions to limit the opportunity for the virus to be transmitted in those situations, and other restrictions to protect our care homes and hospitals, which provide an additional layer of protection but also seek to limit the opportunity for the virus to be transmitted from the city to the surrounding areas.

**Adam Tomkins:** The term “proportionate” is not one that we can choose to define howsoever we like—it is a matter of law. In law, “proportionate” means that measures will be lawful only if they can be shown, on the basis of evidence, to be the least restrictive available means. That is what proportionality means. A proportionate response is the least restrictive available means.

In order to understand whether the regulations meet that test, we need to know what the intended outcome is. From the beginning of the coronavirus crisis, the intended outcome has been perfectly

clear: it is to save lives and protect the national health service.

Yesterday, the BBC reported that there have been 226 confirmed cases of coronavirus associated with the Aberdeen cluster so far. Of those 226 cases, how many people have been hospitalised with Covid-19? Of those in hospital, how many are in intensive care?

**Jeane Freeman:** There have also been 172 cases in Aberdeen that are not linked to the initial cluster. As I said in my opening remarks and in response to an earlier question, those cases, together with the clusters that are linked to bars and leisure facilities, are of considerable concern. I refer back to the number of cases per 100,000, which is an important measure of the level of risk.

With regard to the number of individuals in hospital and in intensive care, my understanding is that none of those people have been admitted to intensive care. We will double-check, but I do not believe that any of them have been admitted to hospital either.

Of course, as we know, and as I am sure that Mr Tomkins is aware, the measure of seriousness of the impact of the virus, should someone contract it, is not simply whether they are hospitalised or end up in intensive care; there is also the harm to their health. Emerging evidence is very clear about long-term harm to the respiratory and cardiovascular health of individuals who were otherwise healthy before they contracted the virus but are now experiencing significant health problems that have led to them continuing to be very unwell—not to mention, in some instances, additional psychological problems.

Using solely the measurement of hospitalisation and intensive care to judge the seriousness of Covid is, I would argue, a flawed approach.

**Adam Tomkins:** Thank you, cabinet secretary. I do not disagree with your remarks about the potentially extreme seriousness of this disease. However, our job as lawmakers is to ensure that the law that this Parliament makes is proportionate and lawful.

Given that the ambition of these regulations is to save lives and protect the national health service—an ambition that we all share equally, right across the political spectrum—and given that, as you have just said, there are very few hospitalisations and, at the moment, no instances of Covid patients being in intensive care in relation to the Aberdeen cluster, it is very difficult to understand what the evidence is that justifies a partial lockdown of a city of 228,000 people. It is our job to try to understand what measures are necessary to be taken and to ensure that the

measures that are taken are the least restrictive available means.

Given all that, what is the evidence that the measures in the regulations are the least restrictive available means? If you cannot provide us with that evidence, the regulations are, *prima facie*, unlawful.

**Jeane Freeman:** Let me do my best, Mr Tomkins. I do not disagree with you that part of our overall objective is to save lives and protect the NHS, and that has been the case since the outset. However, linked to that—in fact, central to doing that—is the shared ambition, across the four nations of the United Kingdom, to suppress the virus in the community to the lowest possible level.

We do not look at whether what we are required to do is proportionate solely on the basis of the number of people who have gone into hospital and how many are in intensive care units. We look at whether the prevalence of the virus in a particular community, which could be a city, a town or another defined community, is too high. Is it rising? Is it coming down, but not fast enough? How does it compare to the rest of the country? If it is much higher than in the rest of the country, the risk is that, if it is not contained and controlled in the geographical area where it is, it will spread. I know that you know, as others on the committee do, just how easily the virus spreads. Given half a chance, it jumps from one person to another, with considerable impact.

This point relates to other questions that I have been asked and to my comment to the convener that I wish there were a straight mathematical equation, but there is not. There are a number of factors. Those include case numbers, and hospitalisations and ICU admissions—absolutely—but there is also the seven-day rate per 100,000. In the cluster cases in Aberdeen, we have a seven-day rate of 37.2 per 100,000. In the non-cluster cases, the seven-day rate is 22.7 per 100,000. Both of those figures are higher than numbers that we would look at in deciding that incoming travellers from any other part of the globe should be required to quarantine. The overall Scottish figure is 6 per 100,000.

10:15

I hope that Mr Tomkins can see that these restrictions aim to prevent the spread of the virus beyond Aberdeen city and to control and close it down within the city. That is why the restrictions have been put in place. Although they have had a very serious impact on businesses in the area, they have also had a serious impact on care-home residents and families, patients in hospital, and families who cannot visit them, travel and a range

of other activities that citizens, quite rightly, want to be able to pursue.

However, the restrictions are necessary, in my view, in order to prevent a significant and complex outbreak in Aberdeen, where the virus is now producing non-cluster cases, from spreading beyond the city boundaries. Significant progress is being made, but in our judgment, it is not yet sufficient, nor has it lasted long enough to allow us to lift any of those restrictions today; however, we will review those matters on Sunday.

**The Convener:** I take it that Mr Tomkins has finished with his questions. Two members wish to ask supplementaries. I will start with Ross Greer.

**Ross Greer (West Scotland) (Green):** Cabinet secretary, I realise that I am about to ask what sounds like a simple question that definitely does not have a simple answer, but bear with me.

I want to follow up on Mr Tomkins's point about proportionality and the selection of the least restrictive measures to achieve the intended outcome. You have touched on the point already, but could you briefly summarise which of the less restrictive measures—in comparison to the ones that were chosen—were considered and discounted? Why were those measures discounted, and why was the decision taken that those less restrictive measures would not have achieved the outcome that we are all looking for?

**Jeane Freeman:** Thank you, Mr Greer. I am getting used to your simple questions that are never as simple as they sound.

We considered whether we should restrict hospitality—bars and restaurants—in the evenings only and whether we needed a 5-mile restriction for leisure purposes. We did not consider an alternative for care homes or hospitals, because we believed that there was no alternative restriction or limitation that we could put in place that would protect citizens who are essentially more vulnerable. We took the view that we had to act quickly and decisively in order to try to lock down the opportunities for the virus to be transmitted; therefore, the restrictions should be of the degree that they are.

As you know, and as I said earlier, the IMT considered whether it would be possible to lift non-alcohol-related hospitality restrictions from this weekend. In its view, that was possible, but on balance, that was not a judgment that we shared. However, that will be part of what we consider on Sunday when we meet again to review the data from the period since we last met up to this weekend.

**Stewart Stevenson:** Adam Tomkins appeared to argue against there being any restrictions in Aberdeen city at all, where we are facing a seven-

day rate of 37.2 per 100,000 against Scotland's figure of 6.

As a person who has been isolated for 156 days from most of the local community and other communities, I want to see the figure in Aberdeen at 6 and will support any measure that gets us to 6. However, the fundamental question—the *reductio ad absurdum* perhaps—is, if we do nothing, will the figure in Aberdeen come down from 37.2 to 6? If the answer is that doing nothing will not achieve that, then it is proportionate that there be restrictions in Aberdeen. Is that a fair statement of affairs?

**Jeane Freeman:** Mr Stevenson raises an important and central point. However, before dealing with that, I will address his other point, which is the importance of everything that we do to protect those who are most at risk from the virus. They are the 180,000 people who we have advised that it is safe to no longer shield and to begin to pick up aspects of their lives that others of us have enjoyed for longer. I know that very many of that number remain hesitant about that and anxious about how safe their communities are.

In Aberdeen city, the community is not as safe as it should be, not only from the cluster cases with the rate of 37.2 per 100,000 but, importantly, from the cluster cases with the rate of 22.7 per 100,000. We must remember, too, that one of the objectives, which I am sure is shared across all the parties in the Parliament, is not only to open our schools safely so that young people can return to the important area of their education, but to maintain the safe opening of those schools. All those factors need to be borne in mind.

I am firmly of the view that if we did nothing—if we lifted all the restrictions at this point—we would not see the transmission of the virus in Aberdeen city controlled, contained and ended in this incident and we would seriously risk a significant spread of the virus to other parts of the geography surrounding the city.

**Clare Adamson:** Good morning, cabinet secretary. I am very interested in your evidence, which of course will inform my decision on whether I will support the motions before us. Significantly, you mentioned the hard work of the teams involved and the success of test and protect. To my mind, the fact that we have not had any deaths or admissions to intensive care shows that that work has been effective and that the Government's actions have protected our citizens, which I was pleased to hear.

You have made three commitments: the meeting on Sunday with partners to move ahead; the £1 million package, on which you said that Ms Hyslop will give further detail and which I welcome; and the route map. I would like to know

a bit more about the route map, given that we have a route map for the general public at the moment. Will the new route map be of a similar type or will it have much more specific detail for particular areas in the economy? Further, given that schools are opening and that, as my colleague Beatrice Wishart said, the universities and colleges are starting to welcome students to Aberdeen, it is important that we recognise the pinchpoints that that might cause for the suppression of the virus in Scotland. I would therefore just like a bit more detail about the route map.

**Jeane Freeman:** I completely agree. The local IMT and the test and protect team have done a significant and fantastic job in what has been and remains a complex situation. The outbreak in Aberdeen is the most complex one that we have dealt with so far, notwithstanding the situations that we have dealt with in Lanarkshire and Port Glasgow. The one in Aberdeen is much more complex, and that is because of not just its size but its nature. I agree completely that the organisations involved—of course, the IMT includes the local authority as a central part of it as well as the health service—have done an excellent job and continue to do that.

The route map that I referred to is not the same as the route map that the First Minister will speak about today in Parliament. I am trying to think of another term instead of “route map”—if you like, it is what we ideally want to do. I do not know whether that is possible, and we will not know that until we have the additional information that will come to us in the period between the decision that was taken not to lift restrictions and the further review that we will have on Sunday. At that point, we hope to be able to say that non-alcohol-related hospitality businesses can open from next Wednesday, and to set out, if you like, a timeframe within which we believe that other restrictions can be lifted.

That is not straightforward, because we cannot say that, if we get to a certain figure, we can lift the other restrictions. As Ms Adamson rightly says, there are a number of factors to take into account, not least the restarting of universities and the significant extra number of people who will be in the city from many different parts of the United Kingdom. We will try to give those businesses for which restrictions continue an indication of what they can plan for, by giving indicative dates and so on, as we have tried to do in the overall route map. However, what I have said should not be taken as an indication that we will definitely lift the restrictions, because at this point I do not know how possible that will be or the level of detail that we will be able to set out.

**Liam Kerr (North East Scotland) (Con):** I thank the convener and the committee for allowing me to participate.

I have three questions on the information that the cabinet secretary has referred to throughout as having informed the decision. First, what was the specific advice, and the provenance of it, that the Scottish Government received from the local team, which you and/or the First Minister deemed insufficiently persuasive to justify a partial relaxation? To refer back to Monica Lennon's question, will you publish that data?

**Jeane Freeman:** All the IMTs that are currently handling outbreaks across Scotland meet at a frequency that they determine. They go through a number of issues, such as case numbers; the rate per 100,000 and the epidemiology; where they think that cases are linked; how they are doing on test and protect; and any other issues that they think are important for them to address because of the impact on their capacity to control the virus and prevent onward transmission. That includes consideration of whether they require the additional resources that we always offer to the IMTs to assist them, such as additional mobile testing units or additional resource from the national provision for contact tracing.

10:30

We see that information on a regular basis, not simply when—as in this instance in Aberdeen—we come to consider whether restrictions could be lifted in a whole or a partial sense. We see that information all the time. Our health protection service is of course directly involved in that, and the directors of public health and other local clinical leads will be involved, too. There is also the senior-level advice that we receive from the chief medical officer and the national clinical director. That and the actual data—the number of cases, whether anyone has been hospitalised, how many contacts have been identified, whether they have all been traced and what has happened with cases in which people are already symptomatic, have been tested and so on—comprises the information that we look at.

When we come together in those discussions, which involve—as the most recent discussion did and as the one on Sunday will—the local authority, we receive an update if there is any further information that we need to have. Of course, the local authority hears all that, too.

In a sense, we are all looking at the same information. In this instance, however, we have reached a different judgment from the view that was reached, on balance, by the IMT and the view that was taken by the city council. The difference in that judgment is that, while the IMT and the

council believed that, on balance, it was possible to open the non-alcohol hospitality sector this weekend, the view and the judgment that the Government took was that, on balance, it was too early to do that. I have set out all the reasons that led us to that position, in particular the rate of cases per 100,000 and the overall position that we are trying to achieve.

That is the information, and that is the basis on which the Government reached its view. Having looked at all the information, the Government took a different judgment.

As for what is published and what is not published, I am not aware of any particular protocol. There might be one for how local IMTs operate; I will be happy to check that. As for the information that the Government looks at that does not come directly from the IMT—the other numbers—we publish as much of that information as we can publish that we are confident is robust and statistically sound. I will check what the position is in local IMTs and whether they have a locus in determining the publication of their own material.

**Liam Kerr:** I am grateful for that answer, cabinet secretary. One would hope that it is all robust and statistically sound. If you would not mind checking out what can be published and letting me know, I would be very grateful.

Moving on to my second question, there seems to be a suggestion that 5,000 jobs might be lost as a result of the continuing restrictions. Can you help me to understand what assessment was done? Was an assessment done, prior to making the decision, of the health implications—the implications for mental and physical health—of continuing the restrictions at the same level, particularly if those job losses were to come to pass?

**Jeane Freeman:** There has been assessment. I am the health secretary, not the economy secretary, and I am sure that Ms Hyslop would be happy to respond on the detail of that question in relation to the work that she and her officials have undertaken with the local community. An assessment was undertaken and discussions have gone on for some time, as I mentioned.

We believed that 422 hospitality premises in the city would be affected by the restrictions. We took that number from non-domestic rates data. The city council's view was that 600 businesses would be affected, and it was the figure of 600 that we used for the additional financial support package that has been put in place. Ms Hyslop and her officials are now working through that to ensure that that financial support can get to those who need it.

In everything that we do as part of our work on the overall route map, and in the way that we have set out how we will make such decisions, we talk about balancing the harms. There is the harm of the immediate health impact of Covid, which—as Mr Tomkins said—can take and has taken lives, and there are the other health harms that are caused by measures that we have taken to control and suppress the virus. There are non-health harms, too, of course, which undoubtedly include the economic impact of lockdown. There is also the issue of how the economy can recover even as we ease the restrictions.

We are very mindful of the importance of balancing those harms, but our intention in suppressing the virus to the degree that we want to is not only to stop people becoming ill from the virus and—if they are particularly badly affected—having to be hospitalised and potentially dying; we are also acting in the knowledge that easing lockdown to the extent that the virus grows exponentially and we have to impose lockdown in a much wider geographical area than a single city would be hugely additionally harmful to the economy. That is a widely recognised assessment, and it is one that we hold to.

**Liam Kerr:** Thank you for that. I understand your point, and I will ask Fiona Hyslop for the assessment that you referred to.

In response to a question from Stewart Stevenson, you mentioned the 5-mile travel restriction. The Aberdeen and Grampian Chamber of Commerce has described that 5-mile restriction as “inexplicable”. What in the evidence that was used to overrule the local—[*Inaudible.*—]—can you provide to the chamber of commerce that will make the 5-mile restriction explicable?

**Jeane Freeman:** It is important to say that when we included the 5-mile travel restriction for leisure purposes in the overall restrictions, neither the IMT, the city council or Aberdeenshire Council disagreed with that. In the most recent discussion with those colleagues, none of them argued that we should lift that restriction. Therefore, it is clear that all those colleagues find that restriction explicable. It is explicable on the basis that we wanted to encourage people to limit their travel into and out of the city of Aberdeen without impacting unnecessarily or disproportionately on work or education.

We had the same restriction in place during the first outbreak that we dealt with, in the areas around Gretna and Annan, which, as I am sure that you will recall, came as we lifted the 5-mile restriction for the whole of Scotland. We retained the restriction for those areas during the work that we undertook to control that outbreak. The intention is to prevent movement of people that is

not essential, because we do not want to give an opportunity for the virus to move with them.

**The Convener:** Thank you. As it appears that no other members want to ask questions at this stage, we will move on to the next agenda item.

I invite the cabinet secretary to move motion S5M-22422.

*Motion moved,*

That the COVID-19 Committee recommends that the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 (SSI 2020/234) be approved.—  
[*Jeane Freeman*]

**The Convener:** Does any member wish to speak on the motion? I see that Adam Tomkins does.

**Adam Tomkins:** Thank you, convener.

It is incredibly important that we understand just how draconian the powers and the regulations are. We all understand that draconian emergency powers are necessary to combat emergencies, whether they are caused by terrorism, war, natural disasters or, indeed, serious public health problems such as coronavirus. However, at the beginning of the coronavirus crisis, all five parties in the Scottish Parliament unanimously agreed that emergency powers could be tolerated only where they were shown by the evidence to be necessary.

We have probed the cabinet secretary in detail and at length this morning on the strict necessity of the measures in the regulations. We have asked her what evidence there is on why they are, in her judgment—she has recognised that it is a question of judgment and not of science—proportionate and the least restrictive available means. We know what the means are designed to achieve: they are designed to achieve ends that we all share. Irrespective of our other political differences, we all want to suppress the spread of the virus, to protect the NHS and to save lives. However, I am afraid that I am unpersuaded that the extraordinary powers in the regulations are the least restrictive means available to the cabinet secretary. For that reason, I will be unable to support them.

**Stewart Stevenson:** With a rate per 100,000 in the Aberdeenshire area that is more than six times greater than the Scottish rate, people's lives will be at risk if we do not pass the motion. I cannot measure that risk but, as someone who is over 70 years old, I can say that I am likely to be personally affected by it. I know that, if I am infected, the results for an older-age person are substantially more severe. All the evidence tells us that. Therefore, for a personal reason, I entirely support the regulations.

I urge Adam Tomkins to think again. It is proportionate to consider measures that will bring down a level per 100,000 that is six times greater than the Scottish average. No other way of doing that has emerged. That is why I shall support the motion to pass the regulations.

**Ross Greer:** The cabinet secretary explained why measures short of the ones that are proposed would potentially not achieve the outcome that we all want to achieve. As Stewart Stevenson said, with an infection rate that is markedly higher than that for the rest of the country, it is clear that robust action is required. The action should be proportionate but robust.

New Zealand, which is the country in the world that is most often cited as having successfully dealt with the virus, has just gone back into a nationwide lockdown because of nine positive cases in Auckland. It has taken the judgment—and it has been correct throughout so far—that short-term, robust action is the best course of action not only for the long-term interests of public health, but for its economy.

I accept that there are significant economic concerns, and we should all recognise that the Scottish Government and the United Kingdom Government will need to provide bespoke support not just to Aberdeen but to anywhere else that has to go into a localised lockdown—for example, through direct business support and extensions to the furlough scheme. However, we should never see it as a choice between public health and the economy. The most robust measures to protect public health are the measures that will protect our economy in the long term. I am therefore content to support the measures.

**The Convener:** Before I invite the cabinet secretary to respond, I will make a personal comment.

A local incident management team and local health professionals have taken a particular view on what should be done, and the Scottish Government has taken a different view. My concern is that local opinion is being overridden by the Scottish Government at the centre. That is why I am nervous about supporting the regulations as they stand.

I invite the cabinet secretary to respond.

10:45

**Jeane Freeman:** Thank you, convener. I have said a great deal already as to why the measures are necessary, but I will make two points to address the convener's concern, which I understand.

In situations in which different judgments are made based on comparable information—indeed,

the same information—we try to find a route through. We have tried to do that here, and the route through is not to wait another week before we consider whether we can lift any of the restrictions but—with Aberdeen City Council and other colleagues, including those leads from the local IMT and the health service—to consider midway through the current week whether it will be possible at that point, because the data emerges over time, to take a different view from the one that was made public yesterday. We are trying to work as much as we can with local opinion and views. I absolutely understand the local concerns. I hope that that reassures the convener that we are not riding roughshod over local concerns and that we do not take the decision lightly. The role of IMTs is critically important to the process, but that does not automatically mean that, when we take a national view in looking at a particular situation, we will always agree with every detail of the local perspective.

My other point is to agree strongly with what Mr Greer said. We should be very careful not to see public health and the economy as being in a battle with each another, or to see it as being a case of one or the other. They are inextricably linked. In normal times, a healthy, vibrant economy that offers equality of opportunity to all is an economy that contributes to good public health. Now, maintaining safe public health contributes to the potential to have such a vibrant, growing economy. The two go hand in hand.

It is never easy to make the balancing decisions and judgments that have to be made between what we have described before as the range of harms. We have said previously that there will undoubtedly be times when we have not got it absolutely right. However, in this instance, I think that the figures speak for themselves. Without such robust measures, we would be looking at even greater infection levels in Aberdeen city than we are looking at now. The situation is improving, but not sufficiently so at this point for us to feel confident in lifting the restrictions today. However, we will look at the matter again on Sunday. The powers in question are necessary to enable us to make that progress, in partnership with our local colleagues.

**The Convener:** Thank you, cabinet secretary. I now need to put the question on the motion. The question is, that motion S5M-22422, in the name of Jeane Freeman, be agreed to. If any member disagrees, they should put an “N” in the chat bar. I see that we have disagreement, so there will be a division.

**For**

Adamson, Clare (Motherwell and Wishaw) (SNP)  
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)  
Greer, Ross (West Scotland) (Green)  
Lennon, Monica (Central Scotland) (Lab)

Maguire, Ruth (Cunninghame South) (SNP)  
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)  
 Wishart, Beatrice (Shetland Islands) (LD)

#### **Abstentions**

Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Tomkins, Adam (Glasgow) (Con)

**The Convener:** The result of the division is: For 7, Against 0, Abstentions 2.

*Motion agreed to,*

That the COVID-19 Committee recommends that the Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 (SSI 2020/234) be approved.

### **Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/188)**

#### **Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/201)**

**The Convener:** The next agenda item relates to two Scottish statutory instruments on which the cabinet secretary gave evidence to the committee at our meeting on 28 July. If any member is not content for motions S5M-22238 and S5M-22299 to be moved en bloc, they should type “N” in the chat bar. Members are content, so I invite the cabinet secretary to move motions S5M-22238 and S5M-22299 en bloc.

*Motions moved,*

That the COVID-19 Committee recommends that the Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/188) be approved.

That the COVID-19 Committee recommends that the Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020 (SSI 201/2020) be approved.—[Jeane Freeman]

*Motions agreed to.*

**The Convener:** I thank the cabinet secretary and her officials for attending the meeting. The committee will publish a report to Parliament setting out our decision on the statutory instruments in the coming days.

10:52

*Meeting suspended.*

10:57

*On resuming—*

### **Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 9) Regulations 2020 (SSI 2020/232)**

### **Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 10) Regulations 2020 (SSI 2020/236)**

**The Convener:** For our second evidence session today we are joined by Michael Russell, Cabinet Secretary for the Constitution, Europe and External Affairs, who will give evidence on two sets of amending regulations that amend the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020. Mr Russell is accompanied by two Scottish Government officials: Luke McBratney, the lead for transition, constitution and rights; and Rebecca Whyte, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations co-ordinator. 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 the invitation to appear before the committee today—I think it is the eighth occasion on which I have come before this committee. Today, I want to discuss two further sets of amending regulations that amend the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, more commonly known as the lockdown regulations.

On 30 July, the Scottish Government gave an indication of the order in which we would carefully and gradually seek to implement further changes in phase 3 of the route map. The First Minister announced the outcome of the sixth review of the restrictions and requirements set out in the principal regulations on 30 July. The outcome of that review and the assessment of the evidence was that it was not yet appropriate to move to phase 4 of the route map in easing lockdown. A further review is taking place today, and the First Minister has already expressed caution about how we will proceed, based on the most recent data. She will of course say more about that in Parliament in the next hour or so.

The amending regulations that we are discussing today give effect to aspects of phase 3 of easing lockdown. They also strengthen the rules and mitigations that we have in place to keep the virus under control. The Scottish Government made amending regulations by way of the made affirmative procedure on 31 July and 7 August. Those regulations entered into force on various



different dates and the plenary vote will take place in due course.

11:00

The amending regulations make a number of adjustments to the principal regulations: they adjust areas where the decision to implement further aspects of phase 3 necessitates a change to the restrictions on businesses and individuals. The regulations have allowed community centres to reopen and they remove the legal requirement on schools to maintain social distancing. The regulations also make provision for additional measures that are necessary to limit the spread of the virus. That includes extending the locations in which a face covering must be worn and giving the Scottish ministers a power to issue guidance on measures that should be taken in order to minimise the risk of the incidence and spread of the virus.

As set out in the updated route map, there are some proposed changes to phase 3 for which we have not set or confirmed a date when they will come into force. Our expectation from the start of phase 3 was that this phase might last considerably more than three weeks. We are already in week 6 of phase 3. It is not yet clear when we will be able to step forward to phase 4. We are keeping that under regular review.

The next review date for the regulations is today and a further review is planned for 10 September. As I said, the First Minister will provide an update later today and set out the findings of today's review. I am sure that the committee will understand, frustrating though it may be, that it would not be appropriate for me to pre-empt anything that the First Minister might announce later today during the plenary meeting.

I hope that those comments are helpful to the committee. I am happy to take questions.

**The Convener:** Thank you, cabinet secretary. I remind you, as ever, that when answering questions you should take a breath before you start speaking. If you wish to bring in your officials at any point please indicate that and give us their names, to allow our broadcasting colleagues to turn on microphones at the appropriate point.

I will start with a question on face coverings. At a previous committee meeting, Graham Simpson raised concerns about the number 7 regulations. He stated that, at that time, it was unclear where face masks were required or not required to be worn, particularly in relation to shops that contain a post office or facilities that involve money transfers. I know that the number 10 regulations amend the principal regulations that apply to retail environments with the effect that face coverings are now mandatory in a wider range of public

spaces, including places of worship, crematoriums, community centres, post offices, takeaways, banks and other financial institutions. Can you say whether you are expecting any further amendments on the wearing of face coverings?

**Michael Russell:** There are no such amendments at the present time. Mr Simpson raised several points that have been clarified by these regulations. I will ask Rebecca Whyte to talk specifically about banks and post offices. You are right, convener, that the regulations define quite clearly where face coverings should be worn. That includes a whole range of places that Mr Simpson might not have thought of, such as aquariums, indoor zoos and visitor farms. The list also includes banks, building societies and credit unions.

There was an issue because there was a difference between the regulations north and south of the border. Rebecca Whyte can say a word or two about banks and post offices to indicate the detail that we have to go into and the process of negotiation with stakeholders that is involved in such matters.

**Rebecca Whyte (Scottish Government):** On the issues that Mr Simpson raised at the last meeting, after that meeting Mr Russell wrote to Mr Simpson setting out more detail about the position at that point and explaining that we were looking at whether changes to that position would be appropriate. To give a little bit more background, when the restrictions on shops were initially developed, our policy colleagues engaged with the financial services sector around the possibility of face coverings in those settings and there were some concerns about the practicality of such measures in relation to security issues and identifying people who come into banks. Subsequently, the UK Government made its own regulations and it concluded that the balance of evidence was such that face coverings should be worn in banks and financial services settings.

Given that many of the businesses in that category operate both north and south of the border, that created some new evidence to consider in relation to the balance of restrictions, so our policy colleagues engaged with the sector again and concluded that the evidence that was emerging about the operation of the policy in other areas meant that it would be appropriate to make the change to regulations that we are introducing, which makes face coverings mandatory in financial settings.

I hope that that gives you a little more detail about the background to the amendments to the regulations and explains the engagement with the sector and our learning from the experiences as the policy on face coverings is operationalised in

different areas, which has helped to clarify where the balance of different factors indicates that face coverings should be worn.

**The Convener:** I see that Ross Greer wants to ask a supplementary, but I have one more question before I bring him in. I have had representations from constituents and those who work in the retail sector to say that they prefer wearing face visors rather than face coverings. Can you clarify what the regulations state about what a face covering needs to be?

**Michael Russell:** Interestingly, there is now a very clear view on that. The regulations require that someone who wears a visor should also wear a face mask. SAGE—the scientific advisory group for emergencies—discussed that on 23 July, and it also discussed the role of visors in the context of the role of aerosol transmission, which is the issue. The group concluded that visors alone offer inadequate protection, in particular for staff in close-working sectors such as hairdressing, and advised that the guidance should be updated to include the wearing of face coverings.

I will quote Jason Leitch on the matter, because he made the point publicly. He said:

“The scientific advice is that face shields do not provide adequate protection against small viral droplets ... which can escape from the bottom of a face shield and land on surfaces or stay in the air for periods of time. They can provide some protection for the wearer against large droplet exposure including, for example, splashing in a health care setting. But they are unlikely to provide any protection for the wearer against small aerosols. You can wear a face shield if you choose to, however you must wear a face covering underneath.”

**The Convener:** Thank you—that clarification is helpful. I will bring in Ross Greer.

**Ross Greer (West Scotland) (Green):** Staying on that specific point, folk who work in retail environments and employers of retail staff have raised questions with me about needing exact clarity around the requirements to wear a face covering in those settings.

Proposed new regulation 6B(3) clarifies the exemptions from the requirement to wear a face covering. From my reading of subparagraph (d), staff are exempt as long as they are not within 2m of other individuals. Does that essentially mean that staff who are moving around the shop floor are not required to wear a face covering as long as they are not within 2m of customers or another member of staff for any long period of time?

**Michael Russell:** I suggest that Rebecca Whyte addresses that question. Ross Greer raises a very good point, which is raised regularly by people who see shop staff not wearing face coverings. We need to be very clear about it.

**Rebecca Whyte:** That provision sets out some situations in which an employee, a volunteer or another person who is effectively working in the setting does not have to wear a face covering. Mr Greer is right that the exemption applies if a distance of 2m is maintained between the person and members of the public; the requirement to maintain distance does not apply in respect of other employees, so a face covering would not have to be worn in that case.

There are additional circumstances that mean that an employee would not have to wear a face covering. For example, where there is a partition or screen between the employee and members of the public, the employee is exempt from wearing a face covering. In settings where staff members are exempt, the guidance suggests that if they feel that they would like to wear a face covering or that it would be appropriate to do so, they are not prevented from doing so; it is just that they are legally exempt from having to do so.

**The Convener:** Does Ross Greer want to come back in?

**Ross Greer:** Yes, thanks. I just needed the microphone turned back on.

That was very useful, Rebecca, and thank you. Just to clarify this situation by comparing it to the one in schools, the guidance that has been provided for school staff is relatively clear in that staff are strongly encouraged to wear a face covering if they are within 2m of pupils for more than 15 minutes, so a length of time is set out there. Obviously, in most retail settings, staff members are unlikely to be with a single customer for more than 15 minutes or a prolonged period of time. However, is there any comparable specific guidance for retail? Obviously, a lot of staff in retail will move around the shop floor regularly and could, in the space of a minute, come within 2m of multiple customers but only for a split second each time. I am getting questions on those aspects from folk who work in retail, because they are not quite sure exactly what they are being told to do. Broadly, they think that they are being told that they do not have to wear a face covering, but they see that there is specific guidance, though not regulation, for teachers that sets out that time limit in relation to the 2m distance. Is there anything comparable for retail staff?

**Rebecca Whyte:** Yes, there is specific retail guidance that picks up a number of issues in the regulations in more detail. If it would be okay with you, I can take your question away, look for the specific bit of the regulations that covers that issue and prepare a written response.

**The Convener:** Thank you. Ross, if you have another question on a different topic, just ask it now, please.

**Ross Greer:** Grand. My question is broadly in the same area and covers somewhat the convener's question on face shields and Mr Russell's answer to it. The quality impact assessment notes that face shields are excluded from the definition of face coverings for the sensible reason, as outlined by the cabinet secretary, that they do not provide equivalent protection. However, concerns have been raised around accessibility and ability to communicate because of the lack of availability of clear face coverings for the mouth and nose. The National Deaf Children's Society has been calling for people to wear clear face masks to facilitate communication. Has the Government given consideration to advocating the use of clear face masks in settings where people are interacting, such as retail and education settings? Further, has the Government given consideration to supplying clear face masks in, for example, education settings, so that those who work in front-line public services are able to communicate with people who have communication barriers?

**Michael Russell:** I am happy to consider that and respond to the committee on it. I do not think that there has been consideration of whether clear face masks should be supplied, but I acknowledge the point about them. Ross Greer will know that, in the guidance and discussions for education, there has been consideration of the impact of face coverings for learners with additional support needs, for those with any level of hearing loss and for learners acquiring English who rely on visual clues. All those matters are in the education sphere and have been carefully considered.

I have constituents with severe hearing problems and communication problems who have asked for exemptions to be applied on wearing face masks, and there are exemptions for communication purposes. However, it is worth considering again whether a suitable compromise can be found through using transparent face masks—I have seen some with simply a transparent area. I undertake to write to the member and committee on that.

**Monica Lennon:** Good morning, cabinet secretary. I want to pick up on the number 9 regulations about school education settings and the wearing of face coverings. I represent the Central Scotland region, where we have had a number of cases in Lanarkshire recently involving school-age pupils confirmed to have Covid, some of whom had been back in the school environment and some of whom had not, which has raised concerns. However, the guidance has a lot of weak language, with schools being told that, if they wish to encourage pupils to wear face coverings, they can do so, and that, if concerns grow about the prevalence of the virus, wearing face coverings can again be encouraged.

However, I have had feedback locally, as have colleagues in their regions and constituencies, about young people feeling that they do not want to be the only one in the class or school who is wearing a face covering.

11:15

Sadly, I read in the media this week that a constituent of mine in Hamilton had been bullied online, and his mum went to the papers anonymously to tell that story. We have all been young—we know what it is like to want to fit in and do what looks like the popular thing. Right now, in the school environment, it does not look like wearing face coverings is popular or mainstream. Does the cabinet secretary also feel nervous about the current guidelines? Rather than wait until we see more prevalence, should we be doing more to mainstream and normalise the wearing of face coverings in the school environment?

**Michael Russell:** As we have done with face coverings in general, we have to look at that issue in the light of the developing science and views. That happened with face coverings and I think that it is happening here. However, the guidance is clear, and there are schools that correctly take the view that, should the prevalence of the virus increase in any part of Scotland—in Ms Lennon's and other areas, there has been evidence of an increase—schools might wish to encourage the wearing of face coverings among adults and older young people in particular. "Might" is permissive but I suspect that wise schools will wish to encourage it. To pick a school out, Bannerman high school is taking that approach, which is in line with existing guidance. In addition, as the Deputy First Minister said earlier in the week, we are keeping the issue of face coverings under close review. The advisory subgroup, which met on Tuesday, is drawing on advice and feedback from all the partners, including in schools, to make sure that the advice is right. It will go on doing so and it will also examine the international consensus, to make sure that it understands what is happening elsewhere.

The current guidance is clear that face coverings are not required for most children, but for those who are clinically advised to wear them, it is essential. However, there might be circumstances in which they should be advised—and schools should advise them—to do so.

Mr Greer referred to the distancing issue; there are other issues but, as I mentioned to him, we also have to take account of people who have additional support needs or hearing loss or who are acquiring English. All of that has to be carefully considered, so it is not a simple matter. The member would probably criticise the Scottish Government if we were too didactic in our

approach; with regard to the criticism that we are not being strong enough, I accept that we have to strike a balance between the two. We are trying to do so, but we should also make it clear to any child that, if they or their parent think that they should wear a face mask, they should do so. That is also true of any adult in a school. Not only can they not be stopped, they should be happy to discuss that and why they want to do so.

**Monica Lennon:** In the interests of time, I have no further questions.

**Beatrice Wishart:** My question follows the discussion of face coverings in schools. Does it not make sense to have face coverings on school transport? I know that that is being reviewed on an on-going basis but, after a week of schools returning, is there a conclusion?

**Michael Russell:** No. Obviously, as soon as there is a conclusion, members will be informed of it. I make the same point to Beatrice Wishart that I have just made to Monica Lennon: if people want to wear masks, if they think that it is right to wear them or if they feel safer wearing them, they should wear them. There is no doubt about that.

**Beatrice Wishart:** Thank you.

**Adam Tomkins:** My question is not about face coverings or masks, nor is it my usual question at the moment about gyms, although I still have not had what I regard as a satisfactory answer about that.

I will ask a question about outdoor exercise. Could the cabinet secretary or his officials explain to me what exactly the rules are at the moment in relation to outdoor exercise, in particular outdoor group exercise? As I understand it—I am not sure whether this is Government advice or industry advice—outdoor exercise in the form of boot camps and classes and so on is limited to a maximum of four households at any one time, but training for group or team sports does not appear to be limited to four households at any one time. Have I understood that correctly? If I have understood that correctly, is that Government advice or is it industry advice, and can the rationale behind it be explained? How can it be okay for group exercise to be in larger numbers when it is for team sports but be confined to a very small number of households at any one time when it comes to training camps, boot camps and the sorts of exercise that people want to do while gyms continue to be closed?

**Michael Russell:** I will ask either Rebecca Whyte or—I am sorry, my mind has briefly disappeared—Luke McBratney to answer those questions. Luke will not forgive me for having forgotten his name, so I apologise to him. One of them should answer the question in the detail that Mr Tomkins wishes.

**The Convener:** Just to help broadcasting, can someone put their hand up and volunteer? That would be very helpful. Rebecca will answer—Luke is obviously in the huff, cabinet secretary.

**Michael Russell:** I really feel that I had a momentary brain fade—I am sorry.

**Rebecca Whyte:** In answer to Mr Tomkins's question, the Scottish Government's phase 3 staying safe and protecting others guidance sets out guidance for those who are undertaking outdoor personal training and for sports facilities. That sets out that there should be a maximum of four other households apart from the personal trainer or leader of the group doing the outdoor activity. That is based on the regulations and personal training gatherings come under gatherings for leisure purposes. Regulation 6A sets a limit of no more than five households that are not otherwise specified in that list and are outdoors. Mr Tomkins may wish to note that there is a separate gatherings provision for supervised outdoor recreation for people under 18 that covers team sports where the participants are under 18. As far as I understand it, individual sports associations are issuing their own guidance that sets out specific measures—for example, there is particular guidance about how cricket balls must be dealt with. As far as I understand it, those pieces of guidance from particular associations must set out that the household limit should be met, so there should not be a discrepancy on that front.

**The Convener:** I do not see any other members wanting to come in, so we will move on to item 5. Are members content that motions S5M-22426 and S5M-22421 are moved en bloc? I do not see any objection to that.

*Motions moved,*

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 9) Regulations 2020 SSI2020/232 be approved.

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 10) Regulations 2020 SSI 2020/236 be approved.—[*Michael Russell*]

*Motions agreed to.*

**Health Protection (Coronavirus)  
(Restrictions) (Scotland) Amendment (No  
5) Regulations 2020 (SSI 2020/190)**

**Health Protection (Coronavirus)  
(Restrictions) (Scotland) Amendment (No  
6) Regulations 2020 (SSI 2020/199)**

**Health Protection (Coronavirus)  
(Restrictions) (Scotland) Amendment (No  
7) Regulations 2020 (SSI 2020/210)**

**Health Protection (Coronavirus)  
(Restrictions) (Scotland) Amendment (No  
8) Regulations 2020 (SSI 2020/211)**

**The Convener:** Item 6 is again consideration of subordinate legislation. This relates to SSIs on which the cabinet secretary gave evidence to the committee at its 28 July meeting.

*Motions moved,*

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 5) Regulations 2020 (SSI 2020/190) be approved.

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 6) Regulations 2020 (SSI 2020/199) be approved.

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 7) Regulations 2020 (SSI 2020/210) be approved.

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 8) Regulations 2020 (SSI 2020/211) be approved.—[*Michael Russell*]

*Motions agreed to.*

**The Convener:** That concludes the committee's consideration of subordinate legislation at this meeting. I thank the cabinet secretary for attending the meeting. The committee will publish a report to Parliament setting out our decision on the statutory instruments in the coming days.

**Stewart Stevenson:** I just want to recognise that this is your last session as convener and to express my entirely personal thanks for the courtesy and fairness with which you have conducted yourself. We will find plenty of things to be on the opposite side of debates on in the future, but I think that we have made effective common cause in the COVID-19 Committee and I want to put that on the record before you scuttle off to do other things. We look forward to meeting your successor in due course.

**The Convener:** Thank you very much, Stewart. I am really rather embarrassed by that. It is very kind of you to say so. I was going to say at the

very end of the meeting—you have pre-empted me—that this is indeed my last meeting of the committee. There is a motion at decision time today to change committee membership and I am due to be replaced by my colleague Donald Cameron.

I thank the team behind the committee. I thank the clerks, who have been excellent at supporting us in what have sometimes been very difficult and tortuous situations, including having to deal with a large amount of detailed regulation. I am grateful to them for the back-up. I am also grateful to broadcasting, because we have managed to run all our meetings, including a stage 2 meeting, seamlessly, in my experience. My thanks to broadcasting for all the technical back-up. Finally, I thank all the committee members for their kindness, support and courtesy towards me. I hope that you will treat my successor equally gently. With that, I close the meeting. Thank you.

*Meeting closed at 11:30.*



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