OFFICIAL REPORT
AITHISG OIFIGEIL

Health and Sport Committee

Tuesday 25 August 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 25 August 2020

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HEALTH AND SPORT COMMITTEE

20th Meeting 2020, Session 5

CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

DEPUTY CONVENER

*Emma Harper (South Scotland) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Donald Cameron (Highlands and Islands) (Con)
Alex Cole-Hamilton (Edinburgh Western) (LD)
*David Stewart (Highlands and Islands) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Sandra White (Glasgow Kelvin) (SNP)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roger Halliday (Scottish Government)
Peter Macleod (Care Inspectorate)
Kevin Mitchell (Care Inspectorate)
Willie Rennie (North East Fife) (LD) (Committee Substitute)
Rachel Sunderland (Scottish Government)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 3

Scottish Parliament

Health and Sport Committee

Tuesday 25 August 2020

[The Convener opened the meeting at 09:30]

Interests

The Convener (Lewis Macdonald): Good morning, and welcome to the 20th meeting in 2020 of the Health and Sport Committee.

I welcome Donald Cameron back to the committee. I also thank Miles Briggs for his work while he was on the committee. He has asked me to pass his thanks on to all colleagues for their work on the committee over his period of membership. Because he is his party's nominated substitute, he might be back.

We have received apologies from Alex Cole-Hamilton; I welcome Willie Rennie, who is attending in his place.

As a result, item 1 on our agenda is declarations of interests. I remind members that declarations should be brief but sufficiently detailed to make it clear to any listener the nature of the interests. In accordance with section 3 of "Code of Conduct for Members of the Scottish Parliament", I invite Donald Cameron and Willie Rennie to declare any interests that are relevant to the remit of the committee.

Donald Cameron (Highlands and Islands) (Con): Thank you, convener. I have no further interests to declare.

Willie Rennie (North East Fife) (LD): I have no interests to declare.

Subordinate Legislation

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 3) Regulations 2020 (SSI 2020/209)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 4) Regulations 2020 (SSI 2020/221)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 6) Regulations 2020 (SSI 2020/229)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 7) Regulations 2020 (SSI 2020/233)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 8) Regulations 2020 (SSI 2020/235)

09:31

The Convener: Item 2 on the agenda is subordinate legislation—consideration of made affirmative instruments. We have six sets of regulations to cover, which are all linked to the quarantine arrangements that are a consequence of Covid-19.

The regulations were laid during July and this month, and all have been referred to our committee because they are laid under section 94(1), which is on international travel, of the Public Health etc (Scotland) Act 2008. Section 122(5) of the 2008 act states that such regulations are subject to affirmative procedure. However, section 122(6) provides that affirmative procedure will not apply if Scottish ministers consider that the regulations need to be made urgently. In such situations, section 122(7) applies; it sets out that "emergency regulations" must be laid before the Scottish Parliament and cease to have effect on expiry of the period of 28 days, beginning with the date on which the regulations were made, unless, before the expiry of that period, the regulations

have been approved by a resolution of the Parliament.

It is for the committee to consider the instruments and to report to Parliament accordingly. This morning, we will have an evidence session on the instruments with the Cabinet Secretary for Justice and his officials. Once we have asked all our questions, we will have the formal debate on the motions, after the evidence session. The committee will also ask a number of questions linked to an earlier session with the cabinet secretary, when we considered the Health Protection (Coronavirus) (International Travel) Regulations 2020—the original of the series.

Once again, I welcome to the committee Humza Yousaf, who is the Cabinet Secretary for Justice. This morning he is accompanied, from the Scottish Government, by Rachel Sunderland, who is the deputy director of the population and migration division; Roger Halliday, who is the chief statistician; and Jamie MacDougall, who is the deputy director of the test and protect portfolio.

With the cabinet secretary's agreement, we intend to ask a single question on all the instruments, in a single session. Therefore, the questions that he will receive from members will cover the whole range of quarantine regulations, including those on which we have to make a decision this morning. As is necessary with virtual meetings, we will take questions in a pre-arranged order. I will start with the first questions before asking each member in turn to ask questions.

Each set of regulations that are made under the emergency health protection powers require to be reviewed at least every 21 days. Are the results of the reviews to be published and made available to the Scottish Parliament?

Humza Yousaf (Cabinet Secretary for Justice): I wish a good morning to the committee. I hope that everyone is keeping well and safe.

The formal review process takes place every three weeks. You will appreciate from the amendments that we have included that we will end up reviewing on a weekly basis all the countries on our exemptions list, for example, because of the data that we receive. However the formal review takes place every 21 days, which means that the next review is at the end of the month, on August 31.

The outcome of each review is communicated to Parliament through a written parliamentary question—a Government-initiated question or GIQ—and that is our intention for the review of 31 August.

The Convener: Thank you. I will turn to the substance of the issues. We heard from you previously, cabinet secretary, and I am sure that you will want to expand on your earlier comments in relation to the current position. How many travellers are currently in quarantine, how many have been required to enter quarantine since measures were introduced, and is it now the case that 20 per cent of all travellers who entered Scotland since the introduction of quarantine measures have been contacted?

Humza Yousaf: I have a list of the latest detailed statistics to ensure that I get them correct. Circa 16,000 travellers have been in quarantine over the past two weeks. Quarantine runs for 14 days. Overall, since the measures were introduced, 36,826 people have been in quarantine. If there is any disparity in the statistics, I will ask my officials to come in to confirm them.

It might seem to be that the figures are heavily skewed in favour of the past two weeks. As we remove from the exemption list countries from which we have a large number of travellers, including Spain and France, that will change. That is why the figures are relatively high for the past two weeks.

The committee will have seen the letter that I sent to clarify the 20 per cent figure. I referenced a figure of 20 per cent of travellers up to a maximum of 450 per week. The figure of 450 a week is ultimately what the national contact tracing centre thought that it could allocate resource and staffing availability to. It has managed to exceed 450, in most cases.

Originally, when we forecast passenger numbers, we thought that 450 would be approximately 20 per cent of passengers. Clearly, that is not the case—hence my clarification in the letter to the committee. Passenger numbers will vary, as countries go on and off the list and come in and out of lockdown. However, in some cases, Public Health Scotland has managed to contact around 14 per cent of travellers—that was last weekend. We are working with PHS to try to reach the 20 per cent figure, which is not a magical or statistically significant number, but it would provide us with more reassurance than we currently have.

Public Health Scotland is, in many cases meeting or exceeding the target of 450 people a week that I referred to in my letter to the committee, but that does not equate to 20 per cent of all quarantined travellers. We are working with Public Health Scotland to understand the resource pressures and to see whether we can reach 20 per cent.

The Convener: Are you saying that what is being achieved is 450 contacts a week—sometimes more—but that the aspiration is for 20 per cent and the reason why you are not achieving that aspiration is because there are not sufficient

personnel and resource at the national contact tracing centre to deliver that?

Humza Yousaf: That is a correct summary. However, we would have to remove people from other contact tracing jobs in order to reach that target. We are having the conversation with Public Health Scotland to see whether we can reach 20 per cent, which would give us even more confidence in the measures. Currently, Public Health Scotland is often exceeding the target of 450 contacts a week.

The Convener: You have given us quite significant numbers, for people who have been in quarantine. How many of those who have been subjected to quarantine have developed positive symptoms of Covid-19?

Humza Yousaf: That figure is not published. Public Health Scotland has information about people who have travelled to Scotland internationally and have tested positive for Covid-19. As with all people who have tested positive for Covid-19, Public Health Scotland follows up the contacts that they might have met in recent days. However, those figures are currently not published.

The numbers are low. We will work with Public Health Scotland to explore what can be published in a way that respects people's privacy. When the numbers are very low, we have to ensure that we do not inadvertently identify individuals.

The Convener: If we are talking about a low number and 16,000 people have been quarantined over the past two weeks, it is difficult to see how publishing that information would identify individuals. Is there a particular barrier to publishing the numbers?

Humza Yousaf: It is largely about people's privacy. You are right: that number is high, but people might come from a country from which very few travellers regularly come to Scotland. If a person is from a country—not Spain or France—that is on the quarantine list but from which low numbers are coming in, they might well be identifiable.

As I said, Public Health Scotland does not publish the figure, but I am certainly not opposed to its doing so. In fact, I will actively consider whether we can publish the figure.

The Convener: Okay—that would certainly be useful. It is clear that the reassurance that the public are looking for that the measures are effective and the evidence of that for Parliament are important considerations, and publication of the numbers would certainly help with that.

It is clear that, if a country has been taken off the exempt list and quarantine is therefore required, people will have arrived here in the days before that decision was made. Is there any measure to check those who arrived from Spain, for example, before it was taken off the exempt list? Is there any measure through which to check those who arrived before the change in regulations?

Humza Yousaf: There is not, if the country was on the exempt list. One hundred per cent of people who arrive and are meant to be quarantining will receive an email, but they will not receive one if they arrived during a 24-hour or 48-hour window in which we made a decision, for various operational reasons—for Border Force, or whatever. They will arrive at a time when we deem that an exemption should still be in place, so there will not be a necessary follow-up. However, people will, of course, know to follow the public health guidance and that, if they develop symptoms, they should immediately book a test, self-isolate and follow the other public health guidance that exists.

Roger Halliday (Scottish Government): On the point about privacy, people come from countries from which they are the only person who has tested positive, which has the potential to be quite highly disclosive.

We also have to consider the behavioural effects of identifying that people from particular countries are coming into Scotland in particular places and testing positive. An important consideration for privacy is the concerns that have been expressed about views of bringing unwanted Covid into the country. That was my judgment on publishing such things.

09:45

The Convener: I understand the point, but I think that the cabinet secretary said that the Government's objective is to make—[*Inaudible*.]

Roger Halliday: I did not hear all that. Will you repeat what you said?

The Convener: The cabinet secretary said that he is supportive of making the numbers public and is working towards that. Is that your understanding?

Roger Halliday: With Public Health Scotland, I want to understand how we might make data public, but we need to do that in a way that does not identify individuals, so we will probably need to present it in aggregate form, rather than identifying individual countries from which people have returned.

The Convener: Thank you. I now understand your point.

Before I hand over to colleagues, I return to the numbers of people who have been contacted. If you had contacted 20 per cent of the 16,000

people over the past two weeks, that would be over 3,000 people, but I think that you said that the real number is significantly lower than that.

Humza Yousaf: As I said, the number that we have contacted exceeds 450. You are right—it does not equate to 20 per cent. There is no point in trying to equivocate about this: contact is not reaching 20 per cent. However, I return to the point that 20 per cent is not a magical statistical number. It would, for sure, provide a robust sample size, but I would not dismiss the figure of in excess of 450 people who have been contacted over the week, which gives us a good indication. A good number have been contacted, but you are right: it does not equate to 20 per cent, and there is no point in pretending otherwise.

I would like Public Health Scotland to get to 20 per cent, but I would also like to understand what the staffing and resource implications would be, and to ensure that there would be no detriment to other parts of the contact tracing operation.

David Stewart (Highlands and Islands) (Lab): Good morning to the cabinet secretary and witnesses. How many travellers who are subject to quarantine have breached the regulations?

Humza Yousaf: Again, you would need to look at the various offences that exist. There is an information offence if someone does not fill out the passenger locator form, and Border Force will follow that up. That applies to everybody regardless of whether they are quarantining. There are then the offences relating to quarantining. As you know, Police Scotland takes a reactive approach to that in the normal course of its duties. We have made it public that, if Public Health Scotland fails to contact somebody after a number of attempts and it reasonably suspects that there is a breach, it will pass the information on to Police Scotland, which will follow it up.

We would not have figures of the nature that David Stewart asks for because we do not expect Police Scotland to knock on the door of every single person who is quarantining. That would be 16,000 people in two weeks. We would not expect Police Scotland to spend its time knocking on every person's door to check whether they are quarantining. However, where it has followed up a case, it will take the four Es approach, whereby it will engage, educate, encourage and, if necessary, enforce.

As you probably know, Police Scotland has issued only one fixed-penalty notice so far, which was in the infamous case of Boli Bolingoli, the Celtic player who was disingenuous in relation to his quarantining.

David Stewart: Perhaps I can press the cabinet secretary to give me a bit more practical information. For example, how many travellers who are subject to quarantine have been interviewed by Police Scotland for alleged breaches of the regulations? Do you have statistics on that? If not, perhaps you could write to the committee with the information.

Humza Yousaf: I will ask my officials about that.

It is for Police Scotland to say how many people have been interviewed or whose doors have been knocked on, or how many people have been called or engaged with. That is for Police Scotland, but I am happy to defer to my officials for any update.

Police Scotland publishes the number of contacts that are received for follow-up from Public Health Scotland. I understand that the vast majority of those contacts are followed up. I do not know what form that takes. I doubt that it is an interview. It is probably a knock at the door or a phone call. I am happy to defer to my officials if they have more detailed information.

David Stewart: In previous answers to Parliament, you have said that you are in regular contact with the chief constable. I think you that you said that you communicate weekly by telephone or video call, if not in person. The issue clearly creates resource issues for Police Scotland. The quarantine regulations create a massive new responsibility. Does Police Scotland have the resources to carry out those interviews? There could be significant breaching of the quarantine regulations. It may be the case that only one breach has had publicity, but many travellers from countries that are not exempt might be breaching regulations. Does Police Scotland have the resources to do the job?

Humza Yousaf: I think that there is some misunderstanding about Police Scotland's role in relation to quarantine measures. You are right to say that I speak to Police Scotland at least weekly and often twice a week. I regularly speak to the senior management team, as well as to the chief constable. We have discussed the quarantine measures.

However, as I have said to the committee before, Police Scotland's role here is a reactive one. I do not expect, and no expectation was voiced publicly, that Police Scotland would knock on the door of every person who should be quarantining. That was never the intention, the implication or the insinuation. As I said in my previous appearance at the committee and, I think, in my letter to you, Police Scotland has a reactive role.

If we required Police Scotland to knock on the door of every contact who is quarantining for two weeks, the police would not be attending domestic abuse cases or investigating murders. They would

be checking whether people are quarantining. That is not an appropriate use of resources.

The contacts that are passed on to Police Scotland from Public Health Scotland are published and made available. The figures that are published at the moment might be slightly older, and we may need an update on those. The figures do not overwhelm Police Scotland—they are not huge.

Police Scotland does a number of jobs that arise from the coronavirus regulations. Those are additional responsibilities, on top of the usual business. We are also starting to see crime rates rising. There is pressure from an imminent possible no-deal Brexit, and the public order issues that that might bring. The 26th conference of the parties—COP26—has been postponed until next year, but there is still a huge amount of planning to do for that.

I would not expect Police Scotland to check up on every person who is in quarantine. It is the responsibility of each individual to follow laws and rules. We do not live in a police state.

David Stewart: The cabinet secretary has made my point for me, which is that many new responsibilities have been placed on the police and they may need more resources to meet those.

The cabinet secretary may have misunderstood my point. I did not suggest that the police should visit everyone in quarantine. The Government's own rules require a reactive enforcement action. We understand that. That is why the committee is looking at the regulations. I am asking how much enforcement action Police Scotland has carried out when it has been told to react to a breach of quarantine. That is a simple point. I say, with the greatest respect, that you were exaggerating, cabinet secretary. I did not say that everyone in quarantine should be visited by the police. I am merely asking what action is taken once it has been pointed out to the police that there has been a breach of the regulations.

Humza Yousaf: A very simple answer to that question on enforcement is that one fixed-penalty notice has been issued, which was in relation to that very infamous case. In the other follow-ups carried out by Police Scotland, the police have obviously made a judgment on an operational basis that, after they have undertaken the other three Es—engage, educate and encourage—they have been satisfied that no further action was necessary.

David Stewart: There is a famous American expression: if it waddles and it quacks, it is a duck. For there to have been only one enforcement action for all those people in quarantine seems quite ridiculous. However, I am conscious of time, so I will move on.

What discussions took place prior to the introduction of the regulations on the sharing of relevant information between Public Health Scotland and the Home Office?

Humza Yousaf: David Stewart may want to follow up that first point with Police Scotland. He will understand that, as Cabinet Secretary for Justice, I do not direct the operational responsibilities of the police. If he thinks that it is ridiculous that Police Scotland has only issued one fixed-penalty notice, he has every right to take that up with the chief constable, who will no doubt give him a measured and detailed response about why the chief constable and his officers consider that to have been the correct operational response. It is not for ministers—let alone for politicians—to direct the operational responsibilities of the chief constable.

David Stewart is right to say that discussions have taken place between Public Health Scotland and the Home Office. Those conversations began in late May and continued in June, around the potential sharing of data and the memorandum of understanding for data transfer. I am not sure whether the member wishes for further detail but if he does, I am happy to provide what detail we can in writing.

David Stewart: Finally, have any of the meetings between Public Health Scotland and the Home Office been recorded? Can the committee have further information on that?

Humza Yousaf: I would have to have a look at that. I am not directly involved in the conversations between Public Health Scotland and the Home Office. I would have to consider what can be put in the public domain. I am more than happy to take that away and come back to the committee.

Willie Rennie (North East Fife) (LD): I am a bit confused about the fluctuating position on the number of people who are in quarantine who have to be spot checked. When you were last at the committee, you said that it was 20 per cent and we discovered that it was none, and when you clarified that, you said that it was 20 per cent up to a maximum of 450 people. Today, you are saying that the aspiration is still to get to 20 per cent, yet the statistics report that Public Health Scotland published last week says:

> "Up to the end of July, the National Centre has been averaging around 600 contacts per week. This high level will not be maintained indefinitely as the number of positive cases—[*Inaudible*.]—will be prioritised to contact tracing those cases."

I am confused. If that was what Public Health Scotland was saying last week, why are you saying this morning that you are going to increase the number of cases?

Humza Yousaf: Forgive me, but I did not hear a little bit of what Willie Rennie said, although I think that I got the gist of his question. Members of the Scottish Parliament, including Willie Rennie, have been generally constructive in their engagement around the pandemic. Colleagues, Opposition politicians and many others have said that they would like to see Public Health Scotland get to the 20 per cent figure that we previously articulated. I will not rehearse what I said to the convener about why we chose that figure and why the passenger numbers have varied. I would like to see Public Health Scotland exceed the number of people that they are already contacting, because the more people who are contacted, the larger the sample size and the greater confidence we can have in the numbers. We already have a fair degree of confidence.

10:00

Willie Rennie: Perhaps the bit of what I said that was missed was that, last week, the Public Health Scotland statistical report said that Public Health Scotland was going to reduce the numbers being spot checked. Today you are saying that those numbers will be increased. Did you speak to Public Health Scotland before you came to the committee? I genuinely want to get to the answer on the matter, but you and Public Health Scotland seem to be saying two different things.

Humza Yousaf: No—positions can evolve, and they often do during a pandemic. I am telling you what that the latest position is. I should have thought that it would be welcomed that I want to understand from Public Health Scotland what the implications would be were we to ask it to increase the number of people that it contacts.

I would quite like to see the number increased. I would like it to be a larger percentage of the number of passengers who are having to quarantine.

That is the latest position. That is the position that officials and I are exploring with Public Health Scotland. I need to understand what the implications are for Public Health Scotland and the contact tracing operation before a final definitive decision is made. That is absolutely the current position, which I would have hoped would be welcomed by all.

Willie Rennie: I would welcome that, if it were the case. I just fear that Public Health Scotland's capacity will be tested, especially given that we have seen a number of outbreaks in recent weeks as well as an increase in the number of people who are being tested.

Moving on, the spot-check process has been valuable for identifying or contacting around 650 to 700 people since spot checks were started. However, only 19 reports have been made to the police by Public Health Scotland. Who are the people that Public Health Scotland has not been able to contact, are you confident that those people are complying with the guidance to quarantine and, if not, what is going to be done about it?

Humza Yousaf: Willie Rennie's comment at the beginning of his question is a very fair one. That is exactly what we are trying to do: figure out what the implications of the contact tracing operation would be for Public Health Scotland if we were to increase the number of contacts made, as I would like us to do. I will report back to Parliament on that once those conversations have come to a firm conclusion. I hope that we will get to a position where we can increase the number of contacts without detriment to the contact tracing operation overall.

On the question of the figures, there can be a lag between the figures that are published by Police Scotland on the contacts that are referred to it from Public Health Scotland and the latest position. I will write to the committee with the latest verified figures from Police Scotland for how many contacts Public Health Scotland has passed on to it.

When Public Health Scotland takes a sample and contacts people, it tends to try on numerous occasions to get through. If it is unable to get through and it has a reasonable suspicion that there could be falsified information or it has any concerns about the quarantining, it passes on those contacts to Police Scotland for follow-up.

I will try to get the committee the most up-to-date figures; there can often be a lag between the figures that are made public by Public Health Scotland and the data that is published by Police Scotland.

Willie Rennie: This is not a lag; this is about there being up to 700 people who Public Health Scotland has not been able to spot check, which is a big percentage of those it has tried to contact. I am surprised that you do not know who those people are, why it has not been possible to contact them and why only small numbers have been referred to the police. That seems to be a massive gap in our knowledge. What are we doing about that?

Humza Yousaf: Remember that every person who should be quarantining will be contacted by email. The success rate of email is just shy of 99 per cent: 99 per cent of emails from Public Health Scotland are getting through to an email address. Everyone who should be quarantining, minus 1 per cent, is being contacted. We need to think about the measures as a whole; it is not just about the sample that Public Health Scotland will look to

contact. Via email, every person will receive the public health guidance as well as information about the expectation that they should be quarantining and the measures that Public Health Scotland can take—it can pass their details on to Police Scotland if necessary.

I am happy to come back to Willie Rennie on the 700 people it has not been possible to spot check, unless any of my officials who are online has anything to add in response to Mr Rennie's question.

The Convener: I do not see any indication that Mr Yousaf's officials wish to speak, so I will hand over to Willie Rennie for a final question.

Willie Rennie: That is fine, convener. We can move on.

Emma Harper (South Scotland) (SNP): Good morning to committee members and the cabinet secretary.

I am interested to know when the four-nation quarantine approach was first discussed and when it was agreed that it would be implemented from 8 June. Prior to that, what discussions had taken place about how information would need to be shared between all four nations?

Humza Yousaf: Generally speaking, the relationship between the four nations has been positive. In the beginning, it was a bit challenging to get some of the data when we knew that it was available to the United Kingdom Government. However, I think that we have managed to get through those issues. Generally speaking, the relationship is a strong one and a fair number of discussions have taken place.

Again, we have said quite publicly that Scottish ministers had argued for the introduction of health measures or controls at the borders for some time, but we were also cognisant of the fact that it would be better for that to be done on a four-nations basis. Those discussions progressed as rapidly as they possibly could, and 8 June was agreed as the date when all countries could implement those measures.

As I say, we are in regular, constant contact about any updates to sectoral or country-specific exemptions.

Emma Harper: Is the UK Government providing the Scottish Government with updates from the Institute for Government's joint biosecurity centre on international infection rates on a weekly basis? Are you getting that information efficiently, once a week?

Humza Yousaf: I would say that the information flow is in a good place. We are getting the information regularly and as soon as the UK Government is getting it, I think, which is positive. It was not always thus, but I have to say that the information flow has certainly improved in the past number of weeks. As things stand, I have little concern about the data that we receive from the joint biosecurity centre. Public Health England is also coming to us in a timeous manner.

Emma Harper: Do you believe that that approach is secure enough to protect Scotland, given that the greatest risk of infection is from travellers arriving in Scotland who might be carrying the virus, since the reproduction number is pretty low in our own population?

Humza Yousaf: We tend to look at prevalence as one of the data points. A whole range of data is explored and we essentially rely on two assessments to decide whether a country should be exempt or people from those countries should be quarantined: first, data from the joint biosecurity centre and secondly, a risk analysis that is done by Public Health England. Those two assessments put together allow us to have a discussion about which countries should be exempt.

In my view, we have good, robust measures in place. Countries right across the world have quarantine measures in place, as they are seen as a robust measure in the fight against inbound transmission. That does not mean that there will not be imported cases from abroad. It would be foolish to suggest that there will not be a single imported case—of course, there will be—but we are aiming to minimise that risk through using those measures.

Iceland tested people by using high-temperature checks at the border initially, if I remember correctly. However, it then moved to a quarantine position because that was seen to be more effective. The quarantining of people for 14 days when they travel into a country is seen as a robust measure, in which I have confidence.

Emma Harper: I have a final question about people coming into the country. The Border Force data is that 17,633 passengers have arrived at Scottish airports. That number is probably out of date now, but it specifically refers to airports. I asked previously about ferry travel and about what happens if someone flies into Dublin and then gets a ferry from either Larne or Belfast into Cairnryan, for example.

Is the cabinet secretary satisfied that passengers entering Scotland are being invited to fill in forms with accurate and complete information? That applies to ferry travellers as well as to air travellers.

Humza Yousaf: Emma Harper is absolutely right—it applies to people travelling into the country on ferries. If you are coming from a non-exempt country, even if you have spent time in an exempt country such as Northern Ireland or the

Republic of Ireland, as part of the common travel area, you would then have to quarantine for 14 days, minus the amount of time that you spent in an exempt country.

However, if you were coming to Scotland and you had to quarantine, you would still be expected to provide that information to the Border Force. Forgive me—I do not have the numbers for those who have travelled to Scotland by ferry. I will look into whether I can get that disaggregated data for Emma Harper.

My assumption is that the vast majority of people who are travelling by ferry into Scotland are coming from an exempt country such as Northern Ireland or the Republic of Ireland, but there may well be people who are coming from a non-exempt country. Therefore, they would have to fill out the passenger locator form and quarantine for 14 days. I will see whether I can get some figures and come back to Emma Harper on that.

The Convener: Cabinet secretary, it would be helpful if you could come back to the committee with those numbers. It is striking that David Stewart, Willie Rennie and Emma Harper have all asked questions for which you do not have the information to hand.

Clearly, it was a choice of the Government to introduce the regulations as emergency measures under the 2008 act. Are you satisfied that the approach that was taken with all these instruments gives the Scottish Parliament an appropriate opportunity to scrutinise the actions and the intended actions of the Scottish Government in such an important area?

Humza Yousaf: I take slight issue with your commentary that it is striking that we do not have figures to hand. David Stewart's question seemed to suggest that he was asking about whether the police have enough resource. I do not know exactly what figure he was asking for, but I am more than happy to look into it. For Willie Rennie's question, I was simply making the point that every person in quarantine will be contacted. He asked me to take a look at the 700 that he says have not been contacted and all I have said is that I will come back after double-checking what measures have been put in place for those people. However, the figures that we have are published. For any figures that are not published, I will take a look at what we can provide publicly, because transparency is hugely important.

10:15

As for ferry figures, I do not think that we disaggregate. I am not sure why it would necessarily be "striking" but, when it comes to the people who should be contacted, or who would be part of the sample that would be contacted, it is not relevant whether they come in via air or via ferry. If they should be contacted, they would be part of that sample or of the cohort that would then be sampled.

I will see if I can answer the substance of your question regarding Parliament's scrutiny. These matters are moving at an extraordinarily quick pace. We often rely on data from foreign Governments. We can get updated figures from a foreign Government that will show that a situation in a particular country has rapidly evolved and changed. That is why we would have to move at a really quick pace, and that is why we have taken the approach that we have taken.

You made reference to the fact that the committee will scrutinise the amendments that are made, and there is a window in which it can choose to approve the regulations. If there is something that we can do to further enhance Parliament's scrutiny of the regulations, I have no issue with that. I am happy to engage with the committee or indeed with the Presiding Officer on that. We are moving at this pace because of the rapidly evolving situation in various other countries, but I am happy to keep my engagement with Parliament under constant review.

The Convener: That is appreciated. Clearly, the requirement to provide information that the committee asks for is fundamental to the relationship between Parliament and Government. If Government chooses to supply some of that information on a confidential basis, that can be agreed between us.

I think that Emma Harper wants to clarify the point that she was asking about. It is not so much about numbers as about knowing which people are coming from non-exempt countries by means other than air.

Emma Harper: I know that the numbers will fluctuate, so I am not really seeking accurate numbers of people coming into the country, cabinet secretary; it is just about the security of completing forms, including passenger locator forms, and about accuracy. That is the assurance that I was seeking; it was not necessarily about the numbers—as I say, I know that they will fluctuate.

The Convener: Cabinet secretary, can you essentially confirm that you are able to identify everyone travelling—[*Inaudible.*]—by ferry or by other—[*Inaudible.*]

Humza Yousaf: I lost you there, convener.

The Convener: Emma Harper's point was not so much about the numbers as about whether we can be secure in the knowledge that people are

completing forms in an appropriate manner. Is that something that you can assure the committee of?

Humza Yousaf: Forgive me, convener—again, I am not sure whether the difficulty is with my connection or yours.

Yes. I refer to my previous answer to Emma Harper. Of course people should be filling out the appropriate forms, whether they are coming in via ferry or via air. Border Force at the ports would of course check a sample of those forms.

Rachel Sunderland might have more to add in response to that question.

Rachel Sunderland (Scottish Government): Yes—I am happy to say a little bit more. In essence, the rules are that it does not matter which way someone comes into the country, or indeed whether they come in via a point of entry elsewhere in the UK, as they are caught by the regulations based on their place of self-isolation. Border Force and the Home Office should be sharing the data with us, based on the addresses that individuals are inputting. It should therefore not be the case that people coming into Scotland, having entered via a port or airport elsewhere in the UK, would not be caught. I can give you an assurance from a policy perspective that that is what is happening.

The Convener: Thank you very much. We are also keen to understand the practical implementation of the policy. I am sure that the cabinet secretary can write to the committee to confirm that.

David Torrance (Kirkcaldy) (SNP): My questions are on the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 3) Regulations 2020. Why was it considered that these regulations required to be introduced urgently?

Humza Yousaf: As members will be aware, because of the low prevalence point of the virus in Scotland, the risk of inbound transmission and importation of the virus from outwith Scotland became quite high. At the time, it was agreed by all four nations that taking such action was urgent. We were pushing for some kind of controls at the border for a fair bit of time. We wanted that to be done on a four-nations basis. That made sense for obvious reasons. Essentially, because the community transmission and prevalence of the virus in Scotland was so low, the risk from inbound transmission was greater.

David Torrance: What practical effect will the provision of information in the passenger locator form on the countries that people have previously visited have?

Humza Yousaf: There might have been a problem with my connection. Did you ask me about information that people provide when travelling from a non-exempt country?

David Torrance: I am asking about the information collected on countries that people have visited prior to arriving in Scotland. What practical effect will the provision of that information in the passenger locator form have?

Humza Yousaf: First, every person who should be quarantining should receive an email and that information will have been provided on the passenger locator form. That email will be sent to every person who should be quarantining. There is a 98.8 per cent success rate for those emails going through.

There are also sample checks of passenger locator forms. The success of those is quite high. As we have already discussed, a sample will then be followed up by Public Health Scotland. If Public Health Scotland is unable to get through to someone after several attempts and there is a reasonable suspicion around the person's quarantining activity or the information provided, that information can be passed on to Police Scotland. All the information from the passenger locator form is hugely important.

David Torrance: In a previous answer you said that the police role would be reactive rather than proactive. How will we enforce the rules on people coming from countries that have restrictions?

Humza Yousaf: Throughout the pandemic, Police Scotland has taken the four Es approach: engage, educate, encourage and—as a last resort—enforce. The contacts will either be passed on to the police by Public Health Scotland as we have already discussed, or they may come across people through third party reporting—if someone knows that their neighbour has come back from Spain and should be quarantining but they are not, they may well call on Police Scotland to follow that up—or in the normal course of their duties. There is a range of ways that Police Scotland may come into contact with someone.

Brian Whittle (South Scotland) (Con): Why have the business and regulatory impact assessment and the equality impact assessment not yet been published? Do you intend to publish them and, if so, when will that happen?

Humza Yousaf: The BRIA has been published. We can send details of that to the committee. I hope that the equality impact assessment will follow later this week—it should be no later than the end of the week. We can pass that on to the committee via the convener.

Brian Whittle: What is the rationale behind, and the business, regulatory and equality impact of, exempting elite sportspeople from the requirements to quarantine and provide

information in the passenger locator form? Obviously, I have a specific interest in that.

Humza Yousaf: I recognise Brian Whittle's particular interest. He raises an important question. Scotland's ability to host elite sporting events has an economic impact, particularly for parts of rural Scotland. Golf is probably the sector that has benefited the most thus far from the elite sport exemption, although football—for example, for the champions league or the Europa league—would also be captured. Indeed, Glasgow City Football Club took part in a champions league match a number of days ago. It is primarily golf that will benefit from the exemption.

Even events that are held behind closed doors have a direct economic benefit. They show that Scotland is still open, and the local economy will benefit from them. Ultimately, if we did not have those exemptions, Scotland could lose events, which could damage our reputation as a place for elite sport. There are a number of good reasons, including economic reasons, why the exemption was introduced. Although the exemptions are in place, firm guidance has to be followed to minimise any risk of inbound transmission.

Brian Whittle: I recognise that, cabinet secretary. We have just had the women's open golf in my home town of Troon, which was great to see.

Scotland has elite international athletes who are travelling abroad. To again mention my sport, we have had fantastic results from Laura Muir, Jemma Reekie and Jake Wightman. They are travelling round Europe and competing under restrictions. How is the risk assessment being managed, given that those athletes are not required to quarantine?

Humza Yousaf: They have to follow the firm guidance that was developed for elite sportspeople, which indicates what they have to do when they travel between countries and when they come back to Scotland. I do not know whether that guidance is public, but I see no issue in the committee having a look at it. Again, I will take that away and we will send the guidance to the committee if members want to have a look at it.

Actually, I think that the guidance might be on the website—yes, it is. Apologies, I am just looking at my detailed information. Sportscotland was consulted and it co-produced the guidance, which is hosted on its website. I am sure that we could either send a link to the committee or that the committee clerks could find that link. Guidance has been produced, which I hope will help to minimise the risk to elite sportspeople and the risk of their bringing the virus back into the country.

Brian Whittle: There have been a number of international athletes at those meetings who have discovered that they have had coronavirus, because they are pre-tested before they are allowed to compete. However, there are a lot of sides to it.

I am interested in the definition of an elite athlete as someone who

"derives a living from competing in a sport".

How did you come to that definition? I know an awful lot of elite athletes who do not make a living from sport. Why has that specific definition come to the fore?

Humza Yousaf: The point that Brian Whittle refers to about someone who

"derives a living from competing in a sport"

is just one of the criteria. I can furnish the committee with other criteria. For example, the definition covers someone who is

"a senior representative nominated by a relevant sporting body"

or

"a member of the senior training squad for a relevant sporting body",

or someone who

"is aged 16 or above on an elite development pathway".

That matches the definition in the guidance that governs the return of high-performance elite sport, which is designed to cover all performance and professional athletes.

Thus far, I have not been made aware by sportscotland or anybody else that the definition is particularly restrictive. Nonetheless, if there are concerns, they can be explored.

10:30

Brian Whittle: I will move on to film and television, and the rationale behind exempting those who are involved in "high-end TV production". That seems to be a very open-ended and non-specific description in the circumstances. What is the rationale behind it? Why has the term "high-end" been used in the definition?

Humza Yousaf: As somebody who has not previously been involved in television production, I asked that exact question about the definition of "high-end TV production" before we laid the regulations. It is a good question.

A "high-end TV production" is defined as

"a television programme which is a British programme for the purposes of Part 15A of the Corporation Tax Act 2009."

The definition in part 15A of the 2009 act states that such a programme must be

"a drama ... documentary, or ... animation."

In addition, the required

"slot length"

—that is, the period of time that the programme is commissioned to fill—

"is greater than 30 minutes."

Finally, it is a programme for which

"the average core expenditure per hour of slot length",

which includes

"expenditure on pre-production ... and post-production",

is greater than £1 million.

Again, if the committee needs more detail on that, we are happy to provide it. In essence, the definition relates to part 15A of the Corporation Tax Act 2009.

The Convener: You mentioned that a business and regulatory impact assessment has been completed for the regulations. I am advised that it is not yet on the Scottish Government website, but I am sure that you will attend to that after the meeting.

Sandra White (Glasgow Kelvin) (SNP): My question is more or less a general one and follows on from my colleague's questions about the travel regulations. The legislation says that 14 days is sufficient time in which to conclude that someone does not have Covid-19. However, if someone has the virus, is a 14-day period in an exempt country prior to their arrival in Scotland sufficient time to be certain that they are no longer infectious and that they warrant exemption from quarantine rules?

Humza Yousaf: If they are travelling from an exempt country, the reason that that country is exempt is because we have taken a decision—on a four-nations basis, I would hope—based on the variety of data that we have received from the joint biosecurity centre and from Public Health England, that the risk of inbound transmission of the virus is really low. In some cases, the prevalence point in the countries that are on the exempt list will be lower than it is in Scotland or England. We would judge the risk to be low or medium, but certainly not high.

The 14-day period would therefore be sufficient, but I will add a couple of caveats. First, airlines know that, if somebody is displaying symptoms, they should not allow that person to travel. If somebody begins to display symptoms just as they are leaving an exempt country, they should not be allowed to travel. If somebody develops symptoms in the course of travel or after travel, when they arrive back in the country, they should follow the guidance by booking a test immediately and self-isolating along with the rest of their household.

Sandra White: I was going to seek clarification on that point about the four-nations approach, so thank you for that.

My next question relates to emergency powers to make regulations, which have already been mentioned by the convener and other colleagues. Such regulations are intended

"to ensure that restrictions placed on those travelling to Scotland are minimised as far as possible."

What makes the addition of a country to the exempt list a matter requiring the use of emergency health powers? You mentioned the four-nations approach in response to Emma Harper, I think. Is that part of the decision to introduce the emergency public health powers in Scotland? Is there a four-nations approach on that, too?

Humza Yousaf: On the latter part of Sandra White's question, it is for each Government to determine how it introduces regulations. The most recent decision that we made, for example, was on a four-nations basis. We announced the decision that day and implemented it 48 hours later, if I remember correctly. Each laying of regulations is the responsibility of the Northern Irish, Welsh, UK and Scottish Governments individually. However, I imagine that, because of the short timeframe between decision and implementation, those other Governments, too, will probably be relying on some element of emergency power. I would have to double-check with the Welsh, Northern Irish and UK Governments, but I suspect that they rely on some emergency or expedited procedure.

On the substance of Ms White's question on why we should use emergency powers to add a country to the exempt list, you might ask: what is the urgency in that? The way that I look at it is that asking people to quarantine for 14 days is a huge restriction of their liberty. It is probably the biggest restriction of people's liberty that we could impose. Therefore, if we are able to remove that imposition and restriction, we should do it as soon as it is practically safe to do so.

As we know, there are pressures from the aviation and tourism industries, which face real challenges. If we can move quickly when we know that it is safe to do so, it is right that we take that action as quickly as we possibly can.

Sandra White: That takes me neatly on to my third question. It might be my last question, although I may wish to follow up on this. The policy note lists the stakeholders as

"Police Scotland, COPFS, Border Force in Scotland, Public Health Scotland and key airports in Scotland".

I know that discussions are on-going, but can you tell me what the outcome has been from

discussions with those stakeholders, particularly regarding the impact of introducing measures in airports at short notice?

Humza Yousaf: We keep Police Scotland and the Crown Office updated on the amendments throughout the discussions. My officials talk to Police Scotland officials and officials from the Crown Office and Procurator Fiscal Service throughout our discussions. We will often share news releases with them, and the regulations when they are available. As I mentioned in response to David Stewart, I have a weekly call with Police Scotland in which we often talk about Covid legislation.

Sandra White mentioned airports. It would be fair to say that aviation industry representatives have expressed concerns at the quarantine requirements for passengers arriving in the UK, not just in Scotland. Their central concern has been on what they term as the blanket approach to quarantine. They would like a more regionalised approach, which might take into account the data from the Balearics, for example, or other regions—but mainly from islands. They have been concerned about that.

I am not opposed to looking at a more regional approach, but I would do so only when the data that we receive from the joint biosecurity centre and others gave us the confidence to do that. I do not have data giving a perspective on particular regions or islands. Conversations are continuing with airports and it would be fair to say that they express a degree of reservation about the approach that is being taken.

Sandra White: I am sure that all of us have had constituents raise concerns in relation to places such as Mallorca and Ibiza, which have few Covid-19 cases and yet have restrictions on them. I am wondering how far we can go in relation to the regions of each nation state and how important it is to have the four-nations approach.

I ask this final question on behalf of many other people: why are there no guidelines on social distancing and aeroplane seating?

Humza Yousaf: There is guidance for the aviation sector on passengers. For example, if a plane is taking a route that involves stopping in an exempt country and then a non-exempt country, there is guidance on how to manage the passengers. However, if people are travelling from a non-exempt country, they act almost as one social bubble, because they are all travelling from that one non-exempt country, which perhaps minimises the risk. If more can be done, my colleague the transport secretary will discuss that in his conversations with the aviation industry. I know that he is having that conversation with the airlines and airports regularly and I am sure that he will be able to update the member or the committee directly on that. There is guidance in place for the aviation sector.

Sandra White: Thank you. I hope that we can follow that up.

Donald Cameron: I want to ask about Spain, which was added to the exempt list and then removed. On what basis was Spain added to the exempt list?

Humza Yousaf: The member is probably aware that the UK Government owns the data and that therefore I cannot share all the data on individual countries. I have asked the UK Government to publish the data, because I think that it would be a good thing to do. I know that the Welsh Government has asked a similar question. In fairness to the UK Government, it tells me that it is supportive of that and is looking at ways to do it.

Speaking generally, when we took the decision to put Spain on the exempt list, its point prevalence was at an equivalent level to that of Scotland, which had not been the case in the prior weeks, when the point prevalence rate was significantly higher than Scotland's. When we made the exemptions, there had been a couple of outbreaks in a couple of regions of Spain, but we were under the impression, from the information that we were receiving, that those outbreaks were being carefully managed. Of course, the situation moved very rapidly. We got updated data that showed the number of new cases in Spain and, most worryingly, that the increase was not restricted to just one or two regions of Spain, as we previously had thought, but extended to the vast majority of regions. That is why we took the decision on 26 July to remove Spain from the exempt list.

Donald Cameron: You touched on this issue in the answer that you gave before I asked my first question. Some commentary has suggested that a distinction can be drawn between the Spanish mainland and the Spanish islands. The Balearics and the Canary Islands are popular holiday destinations. Is it feasible to take a regional approach? Are you actively considering such a distinction in relation to Spain?

Humza Yousaf: That is a good question. The member knows that the Government has generally taken quite a cautious approach to the pandemic. I understand that people will criticise that but, as I have often said, I would rather be criticised for being too cautious than for being too cavalier. The data that I have seen does not give me confidence to take a more regionalised approach, because we do not have enough data or enough confidence in it.

For example, we do not have enough data, nor am I confident in the data that we have, on how

much travel there is between the Spanish mainland and the Balearic and Canary Islands. I do not have confidence in the measures of potential inbound transmission from the Spanish mainland into the Canary Islands.

There is a willingness to explore a regional approach but, as I say, we would first have to ensure that we had confidence that the robustness of the regional data allowed the joint biosecurity centre to make a separate risk assessment for that region. We would also have to have confidence about travel between the mainland and the islands.

The Convener: I will come back to Donald Cameron in a moment. I have a brief supplementary from Willie Rennie.

Willie Rennie: I was surprised when the Government lifted the quarantine measures on Spain only to impose them a few days later, because the incidence was on the rise in Spain. The First Minister said that she would consider measures to compensate those who left the country to go to Spain on the basis that there would not be a quarantine. However, I have not seen the conclusion of that consideration. Has there been one?

Humza Yousaf: No compensation will be paid to people who booked a holiday and then decided to cancel. Obviously, they would be able to take that up with their insurance company on the basis of the advice from the Foreign and Commonwealth Office that accompanied that change.

Time and again, the First Minister and I have been clear that there are risks that come with travelling internationally in the midst of a global pandemic. I reiterate that any country is currently at risk, no matter how safe it may seem at the moment. The decisions that are made by the Government to exempt a country or not could change, as we have seen with Spain and France, because the situation is evolving very rapidly.

There will be no compensation from the Government for those people who travelled to Spain, but they should be able to take that up with their insurer.

Donald Cameron: When you add a country to the exempt list, does that mean that you are satisfied that the infection in the country over the preceding 14 days has been at a safe level? Is the previous 14 days the timeframe that you analyse?

Humza Yousaf: It depends on the country and the prevalence of the virus, but 14 days, or two weeks, would be the minimum. As I said, I do not own the data, but I do not think that there would be anything wrong with me giving you some detail from one example. We recently added Portugal to the exempt list, and we considered the data for the preceding four weeks because of the high number of people who might travel from that country. However, in general, we look at a two-week period.

We also consider a range of other matters, such as the measures that a foreign Government is taking to tackle the virus. If the number of cases was rising and a Government was not imposing restrictions or increasing measures for virus control, that would give us cause for concern. The member is right that we look at the preceding 14 days, but that is just one of the measures that we consider.

George Adam (Paisley) (SNP): Good morning, cabinet secretary. I have a question on the back of what Donald Cameron said. What is the process for removing a nation from the exempt list? Can you talk me through how you would go about doing that? A lot of businesspeople in my Paisley constituency have business interests in Spain, and the current situation is causing a bit of a problem for them.

Humza Yousaf: First and foremost, we will look at the data that is presented to us. We will look at the JBC data, the point prevalence, the increase in new cases and the test to positivity ratio. We will look at the whole range of data that we can gather. We will then look at the risk analysis that has been done for each country. That will go into some of the detail that I have already mentioned, but it will also look at the Government's handling of the virus.

We will take all that data in the round and then make a decision, hopefully on a four-nations basis. The four nations have largely been aligned. Recently, there was a difference in relation to Switzerland. That is not covered by the amendments that we are discussing, but it might be covered by others that I will speak to at another time.

We will look at a range of data in the round and then make our best judgment. We will often be cautious in doing so, because the prevalence of the virus in Scotland is so low and the risk of inbound transmission can therefore be fairly high.

George Adam: Following on from what Donald Cameron said, I note that constituents have said to me that there are certain parts and regions of Spain—it is a large country—where prevalence of the virus is low, and that they should be able to go there. Do not get me wrong—it is purely because they have business interests there and they want to go across and deal with them.

Could we work on a regional basis when we look at taking countries off the exempt list? In Spain, there are the islands and the mainland, and you told us that the interaction between the two might be the issue. Nonetheless, could we look at

such decisions in a regional way? I am speaking purely from the perspective of people who have business interests in some of the nations that are not currently on the exempt list.

Humza Yousaf: I cannot really add to what I have said, other than to say that I am definitely sympathetic to those views. I would say, without speaking to the other Governments of the UK about it, that every one of us has expressed some sympathy with that argument, and I see the rationale for it. Nonetheless, we have to look at issues such as the robustness of the data that we get in relation to those regions and the travel between the mainland and the islands, in the case of Spain, or between regions that are not islands.

A third factor that we have to take into account is that, if we took that approach for Spain, we would then have to take it for every other country that has islands, and that would raise a question as to whether we had the same confidence in the data from those countries. We would probably not, but we would have to be consistent and take the same approach for every other country. That could be quite challenging.

The Convener: On that point, can you tell us how many travellers from Spain entered Scotland during the two or three days when such travellers were not required to quarantine? How many were contacted, and in what form?

Humza Yousaf: The number of those who arrived was about 950. I am looking for the exact figure, but I think it was 944. However, they would not have been contacted, because they were exempt from quarantine. They would have had to fill out the passenger locator form, and they would have known that, if they became symptomatic, they would have to book a test and self-isolate. However, because they were not part of the quarantine measures, they would not have been part of the sample of people who were contacted.

The Convener: Some of what we have heard today in your answers to questions has been about low levels of enforcement, for reasons that you have explained fully and which we understand, but that raises a question. Given that this is emergency legislation, why is there is not felt to be a need to prioritise checking on all those who should be quarantining, the level of their contacts, tracing and so on? Does that have any bearing, in your mind? I appreciate your offer to consider how much the Scottish Parliament could further scrutinise the regulations, but does that have any bearing, given their emergency nature?

Humza Yousaf: Again, I will reflect on what you suggest, convener. I would not want you to think that, because Police Scotland's approach is reactive, the quarantine measures are not important. They are important.

It is similar to the situation with licensed premises. Police Scotland officers will not enter every licensed premise in Scotland on a Friday and Saturday night to check whether they are complying, but if the police have evidence to suggest that there are any concerns, or if they spot any breaches in the routine course of their business, they may well look to take some action on the basis of the four Es. Police Scotland's general approach to the regulations has been a commonsense one.

On the emergency nature of the regulations, because situations in other countries can change so quickly, it is important that the regulations are introduced with urgency. However, if we could add to the process a further step whereby Parliament could scrutinise them to a greater degree or I could come to the committee more regularly, I would not have any qualms about taking that step.

The Convener: Thank you, cabinet secretary. That is appreciated. It is a matter for us to consider on another day.

We move on to agenda items 3 to 8 inclusive, which are the formal debates on the made affirmative SSIs on which we have just taken evidence. Are members content for us to hold a single debate to cover all the instruments?

As I see no dissent, I take it that we agree to proceed on that basis. I remind members and others that, because we have moved to the formal debate, members should not put questions to the minister and officials may not contribute to the debate.

I invite the cabinet secretary to speak to and move motions S5M-22258, S5M-22460 and S5M-22463 to S5M-22466.

Humza Yousaf: Given that the committee is short of time—I know that you have a lot on your agenda—and that we have covered a fair bit of ground, I am happy not to speak to each of the motions. The committee has gone through the issues in great detail.

Motions moved,

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209) be approved.

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221) be approved.

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224) be approved.

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 6) Regulations 2020 (SSI 2020/229) be approved.

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233) be approved.

That the Health and Sport Committee recommends that the Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 8) Regulations 2020 (SSI 2020/235) be approved.—[*Humza Yousaf*]

The Convener: Do any members wish to contribute to the debate, the committee having had the evidence session? It appears not.

Motions agreed to.

The Convener: I thank the cabinet secretary and his officials for their attendance this morning and for their answers to our wide range of questions.

Pre-budget Scrutiny 2021-22

11:00

The Convener: We move on to agenda item 9, which is an evidence session with the Care Inspectorate. This is one of a series of evidence sessions that we are holding with health and care bodies, which will contribute to our 2021-22 pre-budget scrutiny.

The committee's approach to scrutiny of the budget reflects the approach that was recommended by the budget process review group. It entails addressing budget implications throughout the year and bringing that information together to inform a pre-budget report for consideration by the cabinet secretary.

This year, the committee agreed to undertake pre-budget scrutiny of the 2021-22 budget while considering the impact on health and social care of Covid-19 as well as the settlement for the current year. Today, we will hear from the Care Inspectorate on its work, including its budget, work in relation to its statutory roles and the impact and implications for its work that arise from Covid-19.

I welcome to the committee Peter Macleod, who is the chief executive of the Care Inspectorate, and Kevin Mitchell, who is executive director of scrutiny and assurance.

We will move straight to questions. I will begin, and then I will bring in colleagues in the usual way. How effectively is the Care Inspectorate fulfilling its statutory brief as set out in part 5 of the Public Services Reform (Scotland) Act 2010, which is to protect the users of social care services, encourage a diversity of services, promote the independence of users of care services and identify and promote good practice in social care?

Peter Macleod (Care Inspectorate): Thank you for that question, convener. Before I answer it, I would like to put on the record my acknowledgement of the loss and tragedy that has occurred as a result of the impact of Covid-19 in Scotland. In the care sector, there has been loss of life and there are many bereaved and grieving families. That is also the case for staff members, who have worked selflessly and have also lost their lives.

Given my role in the Care Inspectorate, it is important that I acknowledge that tragedy and its impact. Having spent 30 years in the sector and having come to my role in the past 18 months, my acknowledgement of that is heartfelt. It must remain a focal point and something that drives us forward to change and learn. I hope that it is acceptable to you that I have put that on the record, convener.

You outlined our key responsibilities under the Public Services Reform (Scotland) Act 2010. Members will be clear that, within the scope of the act, a number of responsibilities, powers and duties are given to the Care Inspectorate. They range from the ability to register services—to give the final say to a service being created in the first place, from childminding services right through to care homes for adults and older people—to the powers and duties in relation to inspection. No doubt we will return to that issue this morning.

We also have a number of powers in relation to the cancellation of registration, the making of conditions and variations to it, and improvement and enforcement activities. That can go right up to the cancellation of a service and therefore its closure. The statutory underpinning of the Care Inspectorate allows us to fulfil the full range of functions.

I absolutely acknowledge that the unprecedented situation that Covid-19 has presented, not least in Scotland's care homes, has led us to continue to reflect, with the Scottish Government and other partners, on whether more should be done or changes should be made to some of the legislative requirements and powers that I have outlined.

The Convener: It is clear that legislative changes have already been made since 2010. For example, oversight of strategic commissioning and planning is now a responsibility of the Care Inspectorate. How have that change and other changes that have been made to your remit over the past 10 years impacted on the organisation?

Peter Macleod: They have impacted positively on the organisation. In part of my career, I was a director of social work, and I believe that commissioning and examining integrated services at local partnership level is critical. We have completed eight such inspections in recent years.

If your question is about the impact that those changes have had on our budgetary and resource availability, I note that we have received some additional resource through business cases that we have made to the Scottish Government for specific requirements such as the expansion of early learning and childcare and some resource in relation to justice services. In recent weeks, we received additional resource to increase the numbers and capacity of our inspector workforce and to recruit to fill vacancies. We have had responsive support in a resourcing sense, which has enabled us to focus on priority areas of risk.

The Convener: You have direct income in addition to the funding that you receive from the Scottish Government. Is the balance of Government funding and direct income right or about right? Are there opportunities to increase the level of direct income to offset increasing demands on Government funding?

Peter Macleod: The proportion of funding is one third income generated to two thirds grant in aid from the Scottish Government and the Parliament. Almost £12 million is generated in fees from registered services, which can be up to £13,500 a year for a large care home service, for example.

We have been taking forward with Scottish Government officials a review of not just the level of fees, but the definitions of services, because I believe that they require to be updated to reflect the current picture of services in Scotland. One of the dilemmas regarding the fees that are raised is how much they impact on services in the social care sector that could already be quite stretched. There is a fine balance to be struck.

Early in the Covid-19 crisis, we deferred fees collection across the sector that we regulate in order to relieve some of the burdens on services that were clearly struggling under the demands that Covid-19 brought.

David Stewart: Good morning, Mr Macleod and Mr Mitchell. There has been a marked decline in inspections of care homes for adults over the past five years. Why is that?

Peter Macleod: [*Inaudible.*]—that we inspect, Mr Stewart. In particular, we changed the methodologies of inspection back in 2014-15 to be much more outcome focused in the way that we inspect. We now look not just at the size of the rooms or other more straightforward service requirements, but at the experience of the people who receive those services, the relationships that they have to support them, and whether those services are responsive to their needs and are achieving the outcomes that we all seek for the individuals concerned.

It would be correct to say that we have developed an intelligence-led model of inspection, which means that we rigorously target our inspections on those services that most need to be looked at and those where we believe that improvement is most urgently needed. Despite the fact that there has been a reduction in the number of inspections over recent years, because of that targeting of inspection and our taking of a risk-aware approach, over the three years up to 2019 we had to take action—unfortunately—to close nine care services in Scotland, using the powers through the sheriff courts that I mentioned earlier.

We are proportionate in what we do. We target the right services that require inspections, outwith the statutory inspections that we need to undertake.

David Stewart: I will move on to return inspections, the number of which has also fallen dramatically over the past five years. Why is that? Has that happened for the same reasons that you have just outlined?

Peter Macleod: The number of return inspections is determined by the improvements that we find require to be put in place. Because we have targeted, in a more risk-aware way, services that are in most need, we have been able to deal with matters quickly. I have mentioned the example of cancellations of registration.

We also have services that do not need inspection continuation or follow-on visits from our improvement team. Over a number of years, our focus has been much more on building resources around improvement services, so that we can assist services that might be experiencing difficulty to improve before we need to take enforcement action against them. Such action is often based on a risk to individuals; we would prefer to be preventative and improving in our approach. There is a mix of reasons for the decline in the number of continued or repeat visits, but that is a principal reason.

David Stewart: What specific monitoring was carried out with regard to residents who were discharged from hospitals to homes during the Covid pandemic? I am thinking, in particular, of homes with poor inspection reports.

Peter Macleod: I again return to the fact that I have long experience in the social care sector; I am a former director of social work. As you will be aware, there is a very clear and defined process for how the decision to discharge somebody from hospital is reached. That will involve a medical person in the hospital setting making the clinical judgment that somebody is ready to leave hospital. A view will be taken by the health and social care partnership in assessing the needs of the individual as to whether, for example, they should be placed in a care home. Critically, the care home requires to ensure that it is equipped to deal with the individual's needs and to make the decision to admit them or accept them for care.

Our role is to ensure that we provide proper guidance and direction to services, particularly on infection prevention and control practice. We would not be directly involved in the grading relationship; it would be a matter for the partnership and the care service, alongside the hospital service, to determine where the individual would be best placed.

I am of course aware that the Cabinet Secretary for Health and Sport has recently commissioned Public Health Scotland to examine a number of cases of individuals who were discharged from hospital into care homes. We await its examination and findings and any further learning and actions that emerge.

11:15

David Stewart: I will not drag you into political controversy, but it is clear that there was a Government move to clear hospitals of patients and put them into care homes during the Covid pandemic—there has been recent coverage of that in the *Sunday Post*. Was the Care Inspectorate brought into discussions about pandemic planning and the effect that that move would have on our care homes, which were obviously under a lot of pressure, particularly those that had poor inspection reports? Were you involved in discussions? Did you give advice, guidance and assistance to the Scottish Government in relation to that decision? I understand that clinical decisions were taken, but a wider, macro, Scottish Government decision was taken to clear hospitals and move patients to care homes.

Peter Macleod: I am aware of that debate, and it is clear what impact such decisions could have had. I repeat that our role as the regulator for Scotland's care services is to advise and provide the right guidance, along with Health Protection Scotland and others, in the face of this unprecedented public health crisis. It is not our role to advise in relation to decisions around discharge of patients from hospital. I made it clear in my earlier answer that such decisions are a matter for the local area on a case by case basis. To answer your question, that is not a role—whether in an advisory or other capacity—that we have stepped into. It is for others to make a determination on how such matters were progressed.

Given the announcement by the First Minister of Scotland about a future public inquiry on Covid-19 and its impact on Scotland, we will await that inquiry and will be advised by its findings, particularly in relation to the question that you posed to me.

David Stewart: Could you explain the self-assessment process, which I presume provides feedback from residents to drive improvement in care homes in the future?

Peter Macleod: As you have described, the self-assessment process is there to give a sense of how the service thinks that it is performing and, in particular, of where it needs to improve. It is critical that it is only part of the picture. The process involves seeking views from those who have been cared for and supported and from their relatives. It is one part of the picture, and it is rigorously tested against the quality frameworks of

the modernised inspection regimes that we have in place in Scotland.

It would be wrong to accept a self-assessment purely at face value. It is an aid to the service and to us, but we rigorously inspect every aspect of care, leadership, management resourcing and training, and, in recent times, we have inspected the provision and suitability of infection prevention and control measures. Self-assessment is only part of the picture that we build. If we find, through building that picture and through inspection and interventions, that things need to improve, we do not hesitate to take appropriate action.

The Convener: Before I bring in Emma Harper, Brian Whittle has a brief supplementary to Mr Stewart's questions.

Brian Whittle: Good morning, Mr Macleod. You can correct me if I am wrong, but I think that the phrase "clinical judgment", which we hear all the time, pertains to the patient's health and their ability to leave hospital. That judgment by the hospital clinician does not take into account the potential impact of moving the patient into a care home setting. Is that a fair assessment?

Peter Macleod: Increasingly, in my experience of that area of practice, those judgments are taken in the round. Clinicians look at the medical circumstances but, equally, they look at the circumstances of the individual. For example, when a judgment is made about whether a person, if well enough, is able to go home, it may be that their home circumstances are not suitable or, indeed, safe for that to happen and that, therefore, a care setting is the best option to take.

I think that I mentioned earlier that a part of the process requires a suitable assessment of the individual's needs to be done by the local health and care partnership and for the individual to be matched with the needs that are determined through that assessment—in fact, such an assessment is statutory. In a sense, that is another form of clinical judgment or assessment.

As I have also said, an assessment and judgment are applied by a care home in relation to whether the individual can be suitably cared for in their setting and whether they have adequate staff, space and nursing support, for example, should that be required.

All an individual's needs—not just their medical needs at the time—should be considered in the round, given all the different parts of the process.

Emma Harper: Good morning. I want to pick up on the issue of inspections and self-evaluation. Are residents and their families involved in the self-assessment process? If so, how is the feedback that is received from residents and families used by inspectors to drive improvement?

Peter Macleod: Such feedback is, indeed, used as part of the self-evaluation process. I repeat that although that feedback is part of the picture and part of what we use in the improvement process, even more critical are the questionnaires, the interviews and the bringing together of groups of people, including relatives and staff members, that we progress as part of an inspection programme. That way, we are able to compare and contrast independently the self-evaluation against our findings.

I think that we always recognise—this is certainly my experience of running services such as care-at-home services for many years—that, sometimes, those who receive the service are more prone to saying that everything is fine if they are being asked by the service provider. However, if a person is making a comment to the inspectorate, they might want to share a slightly different view. Therefore, self-assessments are part of the process, but they can never be the whole of the process. The robust processes that we put in place and the conversations that we have with relatives, staff and those who are cared for are a critical part of how we find out what is going on in a service and the quality of care that it provides.

Emma Harper: I understand that the evaluation and quality framework process covers seven questions, which are part of the self-assessment. They include asking about how people's wellbeing is supported; how good the leadership is; how good the staff team is; how good the setting is; and how care and support are planned. A new question has been added about care and support during the Covid-19 pandemic.

As a nurse, I understand the process of assessing care homes, but the self-assessment process is new to me. I am interested in how we encourage that process to be robust, so that its quality marries up with that of face-to-face inspections.

Peter Macleod: There are a couple of ways in which we do that—and I note your past experience in nursing. First, we ensured that we developed our frameworks in conjunction with people in the sector, so that those people owned the frameworks and were part of how they were shaped. We did the same with question 7—the new question—which focuses on infection prevention and control and related matters.

We have also produced guides and guidance on self-assessment. If you go to our website, you will find various resources on that. My appointment with the Care Inspectorate was in January last year, and in the year up to lockdown we spent many days going around the country talking directly to services about how those resources should be used and how they tie into our quality

frameworks and the questions—there are seven now; there used to be six—to which you referred. We encourage people to undertake self-assessments rigorously. As I said, that is part of the picture.

Question 7 is critical and means that services have to assess the robustness of their infection prevention and control. In the midst of a pandemic such as this, that is what we most rigorously assess. You will see that that is the focal point of our fortnightly reports to the Parliament.

We find concerns that we have to deal with, and we go back very quickly to deal with them. In the vast majority of cases, they are then resolved. We do that with public health, nursing directors and other partners in the system.

Emma Harper: How do you provide guidance and training for your inspectors on assessing performance against the health and care standards, so that the approach is consistent throughout Scotland? Obviously, you carry out such training.

Peter Macleod: Yes, we do. We do that with partners. For example, on infection prevention and control, we work with NHS Education for Scotland. We also work with the providers of services—much of that has been done over the past year. As you said, the aim absolutely is to achieve consistency in how services are inspected.

The way in which we developed the quality frameworks questions to which you referred means that consistency is good. Equally, individual inspectors need to apply their judgment.

In recent years, we have introduced professional development awards; currently, more than 30 members of staff are on that programme. We have also involved Healthcare Improvement Scotland staff in joint inspections, which is important.

All that work, plus the new development programme, is about achieving the consistency of application that you talked about.

Emma Harper: How are assessments fed back to providers? How often are unannounced inspections made?

Peter Macleod: There is of course feedback from assessments. We give providers an opportunity to look at and comment on draft reports, and then we publish the reports. We might or might not accept a provider's comments, depending on the evidence that we find. It absolutely is a process of dialogue with the service, including about where things need to be done—and need to be done very quickly.

I think that you asked about follow-up visits. If so, I reference the more than 160 Covid-related inspections that have taken place, a large number of which required follow-up visits, because we identified immediate concerns about things such as infection prevention and control. Clearly, we have to take very quick action to ensure that such concerns are addressed in the way they should be addressed. That is why follow-up and continuation visits take place, particularly in the current context.

11:30

Emma Harper: In the self-assessment process, how often do services assess their performance as poor or failing? Is that something that crops up now and again?

Peter Macleod: That is a very important question. I would need to go and check the detail of the numbers. I think that the answer is that that happens relatively rarely. Some of the self-assessment models that we have introduced against the new standards are relatively new, and I get the sense from providers in the sector that they are still moving towards making a more accurate assessment of what they are finding for themselves.

I am often impressed with the honesty of services and their ability to reach out for assistance. That is the true hallmark of a service that is willing to learn and to deal with difficulty at the earliest stages. On occasions during this public health crisis, I have been humbled to see services come forward and say, "We need help," particularly in the context of staffing. We have been able to assist services quickly and directly as a result of those requests.

David Torrance: I have some questions on leadership and accountability. How can the health and care scrutiny landscape in Scotland be improved?

Peter Macleod: We always strive to improve. During the Covid-19 public health crisis, we require to reflect, consider and change even more.

On how the landscape should change, we need to reflect on how we can continue to work as closely as we have done during Covid, when support has been wrapped around care homes in Scotland, with directors of public health, directors of nursing, the Care Inspectorate, health and social care partnerships and providers working together to ensure that homes have been as well supported as possible. For example, we produced the safety huddle tool, which service providers and partnerships now use daily to assess staffing levels and how safe and adequate care is.

The landscape of the future is therefore one that is integrated in the interests of the people in Scotland who require care and support. We are governed by the legislation that the convener

mentioned and, should it be the will of the Parliament to revisit the legislation and change the regulation landscape, we will want to make a central contribution to that work.

It is about taking a more integrated approach. For example, we now inspect care homes with Healthcare Improvement Scotland inspectors and public health personnel. That has happened for the first time, and it happened by necessity, because of Covid-19.

David Torrance: Has what is in "Social services in Scotland: a shared vision and strategy 2015-2020" been achieved? What should be the focus of the strategy for the next five years?

Peter Macleod: To a large degree, the shared vision and strategy has had to be informed by the Covid-19 circumstances that we have faced. I think that that means that we have to stop, pause and reflect. At the Care Inspectorate, we are about to go back to our board with a refreshed view of our corporate plan. We do that by necessity; we cannot have the worst public health crisis in living memory and not change what we do, not least because of the tragedy that we have seen unfold in Scotland's care sector, as I said at the beginning of this part of the meeting.

We must reflect and change, and I hope that the submission that I have given to the committee shows that we have changed very rapidly, acted safely and implemented very different systems. We have already changed, and I think that we will change more and in a more integrated manner.

David Torrance: What is the role of the office of the chief social worker in relation to the Care Inspectorate? How does she complement and add value to your work?

Peter Macleod: The office of the chief social work adviser works very closely with the Care Inspectorate, and we very much complement the work that we each do in our different functions. I know Iona Colvin very well, and I regularly meet her, as do members of my senior leadership team. In fact, during the Covid crisis, we are sitting together on the leadership team for children and families for Scotland, and we deal with matters to do with social work and social care that we identify through our inspections. We share intelligence and deal with priority matters that require to be addressed and changed, including where risks have emerged in services. We work together very closely and in a complementary way across a whole range of functions in social work and social care.

David Torrance: Given the Care Inspectorate's multiple roles across such a range of services, does it have the capacity to lead the sector to a sustainable future?

Peter Macleod: We act as both a recipient and a collector of information from our inspection activity across the range of functions to which you refer. That is an invaluable source of information that allows us to explore what is required for now and the future.

On the sustainability of care, we already have the Scottish Government reform of adult social care programme, and we are part of the leadership arrangements for that. It examines issues such as fair work, resourcing and the current care services in place in Scotland. Therefore, we are very well placed, and we would wish to advise on and influence what the future can hold for care services in Scotland.

There are well-known challenges in the sector, but they are also challenges that I see in my work across the British isles and Europe. We need to address those challenges in the most practical way possible, but we should address them in a way that addresses the needs of individuals as they see how their support needs being addressed best by our services, and not necessarily by what we determine is best for them.

David Torrance: Finally, how does the Care Inspectorate currently demonstrate leadership skills? What are the essential elements of a sustainable care sector?

Peter Macleod: On our leadership role, I have referred to the fact that I have over 30 years of experience in the sector. My absolute commitment is to the care of people—that is what I have spent my life engaged in. Fortunately, I have been able to influence positively to some degree some of the changes that have occurred over the years in conjunction with talented people I have worked with.

On the leadership role and sustainability, we will have to look at all the available options to us for the future of the care sector in Scotland. I believe that the home care sector should be and requires to be a mainstay for Scotland's population that is in need of care and support. Equally, we can reflect again on how the measures that have been put in place around the self-directed support legislation for Scotland are promoted. They have recently been reviewed.

At the core of the issue is how we continue to integrate health and care services. They should be further integrated with housing and technology options in order to allow people to live as long as they can safely at home and retain their independence where that is possible.

Willie Rennie: My question is about integration and whether the joint inspections with Healthcare Improvement Scotland are joint in name only. Some of the evidence to the committee makes the point that, although there are joint inspections,

there are different approaches and advice that flow from those. I also wonder whether the Care Inspectorate is visible enough at the integrated authority level, and therefore whether there is a truly joint approach.

Peter Macleod: I believe that there is a truly joint approach. I referred earlier to the eight partnership inspections that have taken place across Scotland. I also cite the fact that I have recently developed a proposal, which I have shared with partnerships and with the Scottish Government, to change the way we do those joint inspections so that they focus much more on the experience and outcomes of the individuals who receive services from the partnerships.

We often focus on the strategic and planning aspects, as part of the inspection duties that the Public Services Reform (Scotland) Act 2010 placed on the Care Inspectorate in respect of integration. However, we can broaden our perspective beyond that to look much more at the lived experience of those individuals who receive care and support, and consider whether that support is suitable for their needs or whether it can be improved. In answer to Mr Rennie's question, I say that we are already changing, and we have already engaged with partnerships on the suggested changes that we propose to make.

We always strive for visibility. I, too, was interested in some of the comments that were made in evidence to the committee. Again, however, we are not necessarily a champion for the sector; we are there to report on what we find without—to be frank—fear or favour. That also might mean that some of the things that we say are not necessarily palatable, because they require things to change, improve or become safer. Nonetheless, I accept entirely that we can change and move forward in the way that Mr Rennie describes. Visibility and profile are part of the new inspections that we propose on an integrated basis.

Willie Rennie: That is helpful. You acknowledge that some of the evidence that the committee has received is pertinent to the issues at play here. The fact that you are changing the inspection system and seeking more visibility is clearly a good thing.

My next question is on the viability and sustainability of the sector. There is no doubt that the pandemic may have a financial impact on an awful lot of social care businesses, which may fail even though they provide good-quality care. In your organisation, do you have the expertise to be able to provide support and advice on the business failure—or business success—aspect, as well as on the quality of care? If not, are you planning to change that? The climate will get a lot more difficult for those businesses, and we may need a greater focus on that.

Peter Macleod: I believe that we have some of the expertise and capacity that is required. We have already had some active discussions—I, along with my leadership team, am about to consider a paper that looks at something that, in England, is called market oversight. I work closely with the chief executive and senior officers of the Care Quality Commission, as I do with others who are in similar positions across the UK. After the failure of Southern Cross—as Mr Rennie may be aware—legislation was brought forward to create that facility within the regulator in England. There are active discussions on that, both in my organisation and with colleagues in the Scottish Government.

I accept that the current situation impacts on the sustainability of services, to which you referred. We are actively exploring capacity in my organisation in order to make it more robust, and we are working with Scotland Excel, the Convention of Scottish Local Authorities, Scottish Care, the Coalition of Care and Support Providers in Scotland and others to ensure that we understand and can map the care sector and its vulnerabilities relating to sustainability.

11:45

Willie Rennie: If you are in discussions with the Government on that issue, do you need more powers through new legislation in order to carry out the functions that you have indicated are being carried out in England and might be necessary in Scotland?

Peter Macleod: I am not sure that we necessarily need legislation. We need the ability to map and consider what is happening in the care sector. I share with the committee the reassurance that, in relation to care providers that operate across the UK—in Scotland and England—we have close working relationships with regulators such as the CQC that allow us to share information in order to provide that assessment.

My considerations have not reached the stage at which I can say definitively that more powers are required, but I am certainly considering what we need to do to undertake the work that we have discussed as a result of Willie Rennie's question.

Donald Cameron: The Care Inspectorate has a role in ensuring improvement in services and advising on them, but it also polices care in Scotland through its inspection and enforcement role. Do you accept that there is a tension between those two roles? If so, how do you resolve that tension in practice?

Peter Macleod: I very much understand the tension between inspection and enforcement, and improvement. The two roles can work in tandem, but they have to be separate, so that the staff who carry out the first role are not always the staff who carry out the improvement role. I have referred to the fact that we attempted to strike that balance through some of the early changes that we made to our model. By improving early, we can prevent harm and poor-quality care. In that sense, the two roles are part of a continuum that should be embraced by Scotland's regulators and, as you say, are part of the legislative make-up of the Care Inspectorate in Scotland.

We must always be alert to that tension and ensure that we deal with the matters that we need to deal with urgently, including safe care. We can balance the roles, and we do so through our improvement strategy, through how we train our staff and through recognising that we sometimes need to enforce immediate action to improve care.

Donald Cameron: You want to further what is described as a collaborative approach to quality in the care sector yet, at the same time, you have to regulate the sector. Are you content that the Care Inspectorate is able to do that?

Peter Macleod: I believe that we are able to do that. My journey has meant that I spent many years being inspected before I became the accountable officer who visits the process on services. It has been a learning journey and, over many years, it has taught me that the best services are those that take responsibility for monitoring their care, ensure that they know where improvements should be made and then take action to make them. In that sense, there is a spirit of collaboration.

However, as we have seen during the pandemic, collaboration sometimes has to be compromised by the urgency to take action in the face of need and, indeed, in the face of safety and protection. That is why we have taken some of the actions that we have outlined in the reports to Parliament.

There is a balance to be struck, but I believe that we can and do strike it. That is evident in some of the comments that have been received in submissions to the committee.

Donald Cameron: If rules and compliance are required, who should set those rules? Should that be the Care Inspectorate?

Peter Macleod: I think that the Care Inspectorate should do that. It depends on what rules and standards are being adhered to. We require to be cognisant of various pieces of legislation in setting rules and standards, including adult support and protection legislation and protection of children legislation. There are various legislative frameworks around the needs and the services that are provided in Scotland's care sector, including, of course, early learning and childcare. I think that we should be, in a sense, the moderator and the body that judges how those standards are met. Equally, we strive to define those standards, based on the experience and the lived experience of those who receive care.

A number of different aspects form the frameworks that we use. I am confident that those frameworks are robust, but they are always under development, and we seek to learn and understand, not least during the experience of Covid-19 in Scotland.

Donald Cameron: Finally, what are you doing to raise the profile of the Care Inspectorate as an organisation with the general public and to raise the profile of the care sector?

Peter Macleod: I was interested to read the comments from many in the care sector about raising the sector's profile through the work of the regulator. As members can see, the publication that I have submitted to the committee gives an overview and seeks to share understanding of what has happened in the care sector, or one particular part of it, through Covid-19. That is one very recent example of how we are raising the profile of what is happening in care. There are many publications on our website and elsewhere.

I do not believe that we are the sector's champion. We can be that to some degree, but there is an inherent tension in regulating and enforcing action where that is required, and championing at the same time. I am not sure that those are in equal balance.

I accept that there is more that we can do and say about the sector. That is something that I have very much taken from the evidence that has been presented to the committee. I will work very closely with partners to understand and take that forward. However, given the level of activity across the 12,500 registered services in Scotland that we are involved in, I believe that we cover and discharge our duties across all sectors in the way the legislation intended us to.

George Adam: Good morning. I am well aware of Peter Macleod's history of delivery in the sector, because we worked together in Renfrewshire Council.

My question, which is about the effect of the Covid-19 pandemic on the Care Inspectorate's activity, follows on from David Torrance's questions. Many respondents have been very positive about the support that your officers have provided. What have you learned about your role and functions during the pandemic?

Peter Macleod: We have learned that we must act quickly to change in the face of an unprecedented set of circumstances. That means that we must apply judgments and decisions that are based on the best evidence possible, including on when it is safe or not safe to inspect because of the risk of our inspectors spreading Covid through care services.

My submission to the committee today illustrates one particular learning point. We changed the contact levels and the scrutiny models that we employed, and we put in place red, amber and green status notifications to ensure that care services could alert us if they were experiencing difficulty with staffing levels. We also put in place virtual technology solutions to ensure that surveillance and examination of care settings was possible even when it was too dangerous to undertake site visits.

I am glad to hear of the positive comments, Mr Adam. The main learning for us is that, while we must guide as clearly as we can, we must also scrutinise and understand what is happening in care services and—critically—provide assistance to those services when they need it.

We have seen an awful tragedy unfold. It is the worst time in my 30-year career in social services. We have been able to seek assistance and get staff into a service urgently when they were needed, through partnerships or other means. We were also able, on almost 400 occasions during the pandemic, to put personal protective equipment into services where it was desperately needed, where the equipment was available and where it was possible for us to do so.

The main learning is that we should never, ever stop being determined to do the best we can. We should adapt quickly and use the best advice to do so, but we should always keep a focus on the individual who needs care at the heart of what we do.

George Adam: That is the first time that you have ever called me “Mr Adam” in all the years that we have known each other.

Older people in residential care remain vulnerable to the pandemic. How do we apply any learning in the months ahead as winter approaches?

Peter Macleod: The learning is already there. As I mentioned, we have changed the wraparound support that we provide to care homes, and it is essential that that support remains in place. Early on, I, along with others, gave advice on how those arrangements could be put in place to best effect; I worked with the director of public health, for example, to that end.

We need to ensure that we are picking up intelligence. We changed our intelligence model to target those services that are most in need. For example, we were able, for the first time, to draw on weekly assessments by the director of public health in Scotland, as directed by the Government in mid-April, as a source of information, as we could look at what they were saying about specific care homes. We used that information alongside other evidence such as complaints, previous inspection history and a variety of other measures of intelligence.

We have learned that we need to ensure that there is proactive wraparound support in place. We can understand as early as possible if there are difficulties emerging, and the service provider can seek to remediate the situation. Moving forward, we can look in particular at how infection prevention and control measures can be most robustly put in place. Just last week, we received new UK clinical guidance on infection prevention and control, and we will put that in place very quickly with agencies such as Health Protection Scotland.

We also have to look at how the design of care services in the future will be influenced by the realities of how Covid-19 is spread, not only in the care sector across society. There is much learning to be done, but we are already doing that. I am part of the mobilisation and recovery group; I am able to contribute centrally to the group, along with other leaders across sectors in Scotland. Our learning, and our influence and advice, is front and centre for the care sector in preparing for any future eventualities around Covid, flu or anything else that tests us.

George Adam: Finally, Peter, following on from what you have just said, how will the Care Inspectorate advise services on maintaining the balance between infection control and respecting personal outcomes, recognising that care homes are primarily people’s homes, not hospitals? Do you think that the balance was and is right?

12:00

Peter Macleod: The fact that the coronavirus has resulted in such a loss of life around the globe, tragically often targeting older members of our communities and indeed those in care settings across the world, causes us to reflect on the balance and the focus, and on how we ensure that infection prevention and control is even more robust in the future. We have learned much about the sustainability of the sector and its ability to cope with such an event again, but we must be determined to continue to learn and focus on the elements that make care safer.

You ask about balance. I am now confident that all parts of the services that are working together to get care supported and to get it through the virus pandemic are clear about the balance that needs to be struck. Somebody's home is not a hospital, with very few exceptions—there are those in continuing care. We must therefore ensure that care homes are homely environments or as like home as possible, striking the balance that you mention.

Over the course of the Covid-19 pandemic, we have rebalanced that, but we must keep our eye on the risks, the concerns and the impacts to life and limb that arise from Covid.

Brian Whittle: Mr Macleod, I have been considering your earlier answer on clinical judgment and the fact that clinical decisions result in patients being discharged into a care-home setting. What involvement did the Care Inspectorate have in developing that emergency protocol whereby local authorities did not have to carry out the normal assessments of individuals being discharged and consulting the individual. What was your role in developing that strategy?

Peter Macleod: I do not believe that we had a direct input into the development of that protocol. I understand its origins, with a requirement to consider assessing need very rapidly. I would need to explore whether there is anything further that I can add in response to Mr Whittle's question, and I could then come back to the committee.

The Convener: Thank you—that would be appreciated.

Brian Whittle: I am a wee bit surprised. Surely the Care Inspectorate must have a role in discussions about the impact of protecting the national health service by moving people out of hospital into care settings. I would be surprised if you were not consulted.

Peter Macleod: I will go and check what the level of discussion and involvement was. I would go back to the point that our role is to ensure that guidance is given to the sector on how it manages infection prevention and control—along with Health Protection Scotland and other bodies. I have already explained the process by which decisions for discharge are made. I am clear about the protocols that I have shared with you from my knowledge of practice. On the question of consultation, I will go and check and come back to the committee on what our contribution was. If it was more directive than I have suggested, I will correct the record.

Brian Whittle: Thank you—I really appreciate that. We might be able to highlight that there is a gap in knowledge. As I said earlier, surely, if we are discharging people from hospital into a care home setting, we should be taking cognisance of the impact on that care home. The committee would appreciate your following up on that issue.

The remits of a number of bodies seems to cross over significantly. Is there an argument for the Care Inspectorate and the Scottish Social Services Council to merge or, at the very least, to have a much closer working relationship?

Peter Macleod: We are co-located in our Dundee offices. We work closely together and liaise regularly—indeed, there is an element of shared services between the organisations. We have distinctively different but complementary features. The SSSC is the workforce regulator and we regulate the services, their quality and the standards that providers aspire to meet.

I do not think that it is a matter for me, given the legislative frameworks that operate between the organisations and on which they are founded, to give you a judgment on that, because I consider that we already work closely together. For example, the publication that I gave to the committee for today's session has joint statements by the SSSC's accountable officer and me on recommended practice. That is evidence of our joint work.

It would be a matter for Parliament to reflect on the legislative frameworks that are currently in place to discharge the key duties and functions for which we are responsible and whether there should be legislative change following that review. I consider that the two bodies work closely together, and that that works in the interests of the sector that we serve.

Sandra White: Most of the questions have been about care homes, but I want to ask about care-at-home services. I thank you for your submission, and for your awareness of and involvement in the home-care sector. How has the Care Inspectorate been ensuring that those in receipt of care at home and other support have been safe? How has the Care Inspectorate been ensuring that staff providing care at home have been safe and are following guidance?

Peter Macleod: We have been closely monitoring care-at-home services. In fact, we are just about to complete an inquiry into care-at-home services.

There are just over 1,000 stand-alone care-at-home services, and more than 1,000 additional services providing housing support. Some 16 per cent of notifications of Covid cases—around 169—were received from those services. That provides evidence of the monitoring and awareness that we have of what is happening in them. We received many inquiries about, for example, the supply of PPE and practice around care at home.

We have received responses to our inquiry from almost all health and care partnerships. We are about to publish a report that will give clear detail that will answer your questions. The report will guide us as to what additional inspection, intervention and other means we need to employ to ensure that that part of the sector has responded and will continue to respond to the increased challenges of infection prevention and control.

I bring in Kevin Mitchell, who is our executive director, to comment.

Kevin Mitchell (Care Inspectorate): On our work at the outset of the pandemic, our significantly increased contacts with services included care-at-home services, just as they did care homes. Those contacts were on a weekly basis at least, and often more frequent if the need arose. We continued to monitor notifications from those services, to monitor complaints and to deal with them, and to analyse on a daily basis—seven days a week, morning and afternoon—the data that we received through notifications of outbreaks and deaths. The enhanced contact with services that Peter Macleod described included care-at-home services, which made up part of the almost 36,000 contacts that we had with 6,700 services between April and July. It was very important that we did that. As Sandra White has highlighted, supporting the services and signposting them when support was required, and providing advice and guidance, was part of that contact and it included, critically, care-at-home services.

Peter Macleod has alluded to the investigative work that we are undertaking because we are aware that, in some areas, care-at-home services were scaled back at the outset of the pandemic. That inquiry, which is almost concluded, will give us a national picture of the impact of the pandemic on decision making on care at home. It will look at how care at home was prioritised during the pandemic; it will monitor the impact on changes to packages that were delivered and how engagement has—or perhaps has not—continued with service users; and it will also look at the recovery plan.

We hope that that information will give us a sense of what we need to focus on and where. That work informs our intelligence-led, targeted and proportionate approach to inspection, which Peter has also alluded to.

The Convener: Thank you. You referred to a review of care at home services, if I heard that correctly. Is that to be provided to the committee, please.

Sandra White: When, roughly, will the inquiry be ready for publication, and can the committee receive that? A very important issue that you touched on is self-directed support and, obviously, councils supply home-care support as well. There is quite a myriad of providers. It will be very interesting to see exactly what comes out of that report. Thank you for the detailed response.

We have received comments from various people, including anonymous ones, about complaints about care-at-home services and the Care Inspectorate. How have you dealt with complaints, anonymous or otherwise, about standards and quality of care during the Covid-19 pandemic? Will those comments be included in the inquiry report that you are going to put forward?

Peter Macleod: The performance data that I have supplied shows how we have dealt with a very large number of complaints and turned them around quickly. After this meeting, I can provide to the committee more detail on where those complaints were specifically around care-at-home services.

What we do with complaints is follow them up. We talk to the provider of the services. As we indicated earlier in our evidence, visiting services would present a real risk of our staff spreading Covid-19, so we have sought information in the round, from health and social care partnerships and others, about any complaints or assertions of poor practice that have been made known to us. We compare that information to the history of complaints that we have in relation to the individual care service. We then make a judgment and take a decision about what action is required.

I am aware of a number of complaints, including anonymous ones. On the specific question of whether those will be included in the report, we will look at whether they can be, given that the report should be published sometime in the next three to four weeks. It might provide further contextual information on some of the questions that you have put to me this afternoon.

Sandra White: I have no more questions. Thank you for your helpful responses.

The Convener: That concludes our evidence session. I thank Peter Macleod and Kevin Mitchell for taking part and for answering so many questions. I look forward to receiving the additional information that has been referred to.

12:15

Meeting continued in private until 12:37.

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