



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# COVID-19 Committee

**Wednesday 9 September 2020**

**Session 5**



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**Wednesday 9 September 2020**

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**COVID-19 COMMITTEE**

**15<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Donald Cameron (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Monica Lennon (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Maurice Corry (West Scotland) (Con)

\*Annabelle Ewing (Cowdenbeath) (SNP)

Ross Greer (West Scotland) (Green)

\*Shona Robison (Dundee City East) (SNP)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

Beatrice Wishart (Shetland Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Professor Linda Bauld (University of Edinburgh)

Sarah Booth (Scottish Human Rights Commission)

Michael Clancy (Law Society of Scotland)

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

Helen Martin (Scottish Trades Union Congress)

Willie Rennie (North East Fife) (LD) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Sigrid Robinson

**LOCATION**

Virtual Meeting



## Scottish Parliament

### COVID-19 Committee

Wednesday 9 September 2020

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

### Interests

**The Convener (Donald Cameron):** Good morning, and welcome to the 15th meeting of the COVID-19 Committee. We have received apologies from Ross Greer and Beatrice Wishart, who are both attending other parliamentary committees this morning.

I welcome Willie Rennie, who is substituting for Beatrice Wishart, and Christine Grahame, who has an interest in the matters that we are considering today.

Under our first item of business, we have various declarations of interest to be made. Stewart Stevenson, do you have any relevant interests to declare?

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I simply record that I am the complainant in a criminal trial that is expected to take place before a jury. Accordingly, I will take no part in that section of the meeting that refers to procedures in court and related matters.

**The Convener:** Willie Rennie, do you have any relevant interests to declare?

**Willie Rennie (North East Fife) (LD):** No, I have nothing to declare.

**The Convener:** Finally, Christine Grahame, do you have any relevant interests?

**Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP):** No, I have none.

## Subordinate Legislation

### Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 (SSI 2020/249)

### Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2020 [Draft]

09:32

**The Convener:** The main item of business today is an evidence-taking session with stakeholders from a range of sectors, to obtain their views generally on the Scottish Government's proposals to extend the use of some of its emergency powers and to expire other provisions early under the Coronavirus (Scotland) Acts.

I welcome our witnesses to the meeting. With us, we have Professor Linda Bauld, who is the Bruce and John Usher professor of public health and the co-director of the centre for population health sciences at the University of Edinburgh; Sarah Booth, who is a legal officer representing the Scottish Human Rights Commission; Michael Clancy, who is the director of law reform at the Law Society of Scotland; and Helen Martin, who is the deputy general secretary for policy, political liaison and equalities at the Scottish Trades Union Congress.

I will ask the first question, which is a general one for any of our witnesses to answer. If they all wish to answer, perhaps they could do so in the order that I have just read out.

Extending emergency legislation is a significant step when it comes to individual liberty. For example, the committee has received several submissions relating to the rights of children and the impact that the extension of emergency legislation has on them. What is the justification for an extension of emergency powers at the moment?

**Professor Linda Bauld (University of Edinburgh):** I have been invited to give evidence to the committee in order to provide a public health perspective. I do not have any expertise in the law or human rights, which I know are the issues at hand.

We are still in the middle of a global crisis. We have 25 million cases globally and there have been more than 900,000 deaths. In Scotland, there have been more than 4,000 deaths and, as you have all heard from the Scottish Government recently, unfortunately, the number of cases here is rising again. In common with many countries, Scotland has many more months to run in terms of the public health consequences of dealing with the

new virus. It is understandable that states and nations around the world have to use necessary powers to enable the public health protection that our population deserves to remain in place. Therefore, as long as the powers are proportionate and the needs and rights of all groups are considered, we have to recognise that now is the time when we should be extending the appropriate parts of this legislation to help us deal with the on-going crisis. I hope that, by next spring, we will be in a better place than we are in now.

**Sarah Booth (Law Society of Scotland):** Thank you for the opportunity to speak to the committee this morning.

The Scottish Human Rights Commission understands the need to take measures to protect the population and deal with the on-going crisis. We believe that it is a fundamental principle of human rights law that measures that impact on an individual's rights and freedoms should be lawful, necessary, proportionate and time limited. For those reasons, we have welcomed the Scottish Government's commitment to human rights in addressing the significant challenges of Covid-19. In particular, we welcome the commitment to review the legislation and to lift restrictions as soon as they are deemed to be no longer necessary to protect against the coronavirus.

**Michael Clancy (The Law Society of Scotland):** Good morning. Thank you for that interesting question. Professor Bauld and Sarah Booth have explained the framework. There is still an on-going coronavirus crisis. It has not gone away, and the legislation that was enacted earlier in the year still has a role to play in keeping society safe and ensuring that we are not exposed unduly to the virus. Various laws and subordinate orders have been passed by the Scottish Parliament—I think that, as of yesterday, there had been a total of 64 regulations concerning coronavirus, which shows you the breadth of activity that needs to be undertaken to keep us safe.

The concept of proportionality has been mentioned, with Sarah Booth mentioning the quartet of requirements that state that measures should be lawful, necessary, proportionate and time limited. The legislation is clearly lawful, as it has been properly scrutinised and passed; it is necessary, because the Government deems it to be so as a result of the scientific evidence that it has received; it is proportionate; and it is time limited, with the regulations that are before the committee today indicating the time-limited nature and requiring an extension of the statutory time limits if they have been met.

I know that there was a debate about proportionality at a previous meeting of the

committee. We could come back to that issue later, or, if you like, we could address it just now.

**The Convener:** It would help if you could say a few words about that issue now, given that we are considering it at the moment.

**Michael Clancy:** I was interested to read the *Official Report* of the debate that took place a couple of weeks ago, when Jeanne Freeman was before the committee. Professor Tomkins narrowed in on the introductory paragraph of the regulations that were then under consideration, talking about legislation being necessary and proportionate. He focused on the regulations being the least restrictive available means of achieving the aim of Government. I think that “least restrictive” is one component of proportionality. Some have described it as whether or not the aim that is to be achieved is a legitimate aim—[*Inaudible.*—]—legislation is used to achieve that aim. A component of that consideration would include questions that the Government would ask itself before laying an order before the Parliament, such as why the rights are being restricted, what problem is being resolved, whether the restriction will lead to a reduction of the problem, whether a less restrictive alternative exists and whether sufficient regard has been paid to the rights of the people who are affected.

Proportionality is a sum of many parts and not simply the “least restrictive” component. I am sure that the Government has that in mind, because the consequences of getting it wrong could mean action being taken against the Government for breaching human rights, so it will be cautious about bringing forward orders in which the proportionality aspect and other considerations have not been taken into account.

09:40

**Helen Martin (Scottish Trades Union Congress):** My point is similar to those of the other witnesses. The reason we need emergency powers to continue is that the crisis continues. In terms of the actions that people need to take, we still need members of the general public to take specific action in their lives and we need action to be taken in the workplace to put in place mitigations that stop the spread of the virus. We need to continue to have some level of the powers enacted, because it is not business as usual.

**The Convener:** My next question follows on from that. In lockdowns to date, the Scottish Government has variously used guidance or regulations to direct the public. Is that an effective method? What implications does the distinction between the two have for parliamentary scrutiny and enforcement? Professor Bauld, do you have a view?

**Professor Bauld:** I will reflect on wider public health measures for which guidance and regulation have distinct purposes. In this crisis, as in other situations, guidance gives evidence-based information to the public about actions that need to be taken—for example, the behaviours that we are asked to engage in as part of the FACTS public health campaign.

In some cases, regulations are necessary to empower or make possible enforcement. That is needed to send a clear message to the public that, if there are breaches of what is, in effect, guidance, there are regulations that allow the police or others to take action. Good examples of that are the ability to take action when people take part in large gatherings unnecessarily and when people in particular groups are being put at risk. The powers are for not just the police but other public bodies.

Guidance and regulation are both important. I will give you an example from another public health topic, which is perhaps not quite as relevant. The introduction of the smoke-free Scotland legislation was done largely through guidance to the public not to smoke in indoor or public places, but compliance was supported by fines and signage. Even though the enforcement powers in the regulations were needed only in a few cases, they sent a strong message to the public that the guidance was stronger than just advice, which is how the public might interpret guidance.

Guidance and regulation are therefore both needed, but guidance in itself is often sufficient.

**Sarah Booth:** It is our position that legality and the lawfulness of regulations are vital in addressing the crisis. In this situation, laws can be useful in allowing people to hold abuses of power to account. For example, we support a human rights-based approach to legislation and policies that ensure that there are mechanisms of accountability, and regulations are particularly important in that regard.

09:45

**Michael Clancy:** If we thought that it was good enough to simply have guidance, there would have been no need for three coronavirus acts and hundreds of regulations across the United Kingdom. Guidance can go only so far in advising people of the behaviours that will keep them and others safe, which is the fundamental objective of the guidance. However, the Government was wise enough to know that some people will not follow advice, even if it is very good, and that, therefore, there has to be a legal framework to establish the ground rules for behaviour in the midst of the pandemic.

It is important that we realise that the regulations are of supreme importance, because that is where the issues that Sarah Booth highlighted about legality crystallise. The regulations have to be scrutinised and passed by Parliament, although many of them are made affirmative regulations. It is fair to say that regulations are of primary importance, and the guidance should supplement and explain those regulations. Sometimes, there is an issue of communication whereby ministers give guidance in such a way that it does not match the text of the regulation. I remember clearly that, in the early days of dealing with the coronavirus legislation, there were occasional references to people being able to exercise for an hour a day although the regulations made it clear that an individual, subject to—[Inaudible.]—should not leave their house unless—[Inaudible.]—was to take exercise. No time limit on exercise was stated in the regulations.

I see that I have just been muted in video terms.

We must be careful to make sure that the communication of guidance conforms to the regulations, because the law matters.

**The Convener:** Thank you, Michael. We are having problems with your connection. For that reason, the broadcasting team has taken your video off, but we can still hear you. I hope that we can resolve the problem. I ask Helen Martin to answer the same question.

**Helen Martin:** The vast majority of ordinary people do not necessarily understand what is being given as guidance and what is being given as legislation. Often, what really matters to people is the tone in which the guidance is given. Therefore, my answer is similar to the point that Michael Clancy made: people rely on the way in which the information is expressed by the First Minister.

There are examples of things that were just guidance being accepted by the public as legislation, such as in the example that Michael Clancy just gave. There are also examples of instructions that were initially given as guidance but that were not well accepted by the public, so the Government had to move to legislation. An example of that is the advice to wear face coverings on public transport. There was a long period in which that was just guidance. The Government felt that it needed to put that in legislation because the number of people using face coverings was so low that even the people who were using face coverings on buses said that they felt uncomfortable using them. Therefore, in order to see sufficient numbers of people using the coverings, the Government needed to make it mandatory.

If people feel that the advice is a requirement and there is some level of enforcement behind it, they will start to comply, because the vast majority of people are law abiding. It is about creating the feeling that things need to be done. Sometimes, legislation is the only way to do that, but it is also useful to issue guidance and encouragement. At times, that can be sufficient to get people to change their behaviour.

**The Convener:** Thank you very much. Before I turn to colleagues for their questions, I remind members of the committee and attendees to pause for a couple of seconds just before they ask or answer questions so that broadcasting can hear them. Also, I have asked my questions to every witness attending, but colleagues might wish to direct specific questions to specific witnesses.

**Shona Robison (Dundee City East) (SNP):** I want to pick up on public consent and communication. It strikes me that we are entering into quite a difficult period of dealing with the virus in that decisions are having to be taken fairly quickly about measures that have to be put in place. That was the case with the local lockdowns that have happened in the west of Scotland, and in England, where changes to the number of people who can meet indoors and outdoors have just been announced, with some pretty hefty fines by way of enforcement.

Turning to Professor Linda Bauld and John Usher first, I wonder whether you have any view of how communication to the public is best carried out at a time when things are changing almost weekly. What is your view of the level of public support for those measures? There is a view that there are differences relating to age and a question as to whether young people, for example, are adhering to the guidance and regulations. Can the Government or the agencies do more to get the message across during this challenging period that we are entering into?

**Professor Bauld:** You have raised three issues there: the timing of announcements of new measures; public support for those measures, which I think will be an on-going issue; and how we support different groups to comply and what evidence there is on that from the data that we have.

The first thing to say from a public health perspective is that, as you are all aware, the main reason why some of these changes are introduced rapidly is that time is crucial when we are dealing with a virus that is highly infectious and moves incredibly quickly. The reason why measures are introduced often with just a few hours' notice, or 24 hours' notice, is that, as soon as the data suggests that one person could spread it to another—our R number is now up to between 0.9 and 1.4, so there is potential in some communities

for active spread—we need to shut down those chains of transmission as soon as possible. That is the reason for speed, but I do not think that the public understand that as well as they could. They probably understand it better here, in Scotland, because we have continued to have daily briefings, but they understand it far less in England.

From a behavioural perspective, it would be helpful if, in one of the briefings, one of our colleagues said clearly why things such as local restrictions are being imposed with just a few hours' notice and commented on, for example, countries being added to or taken off the quarantine list, although they have already mentioned some of the reasons for that. That is because, again from a behavioural perspective, clear communication and explaining the evidence precisely are very helpful. In some of the interviews that I have done this morning on the new restrictions in England, I was quite rightly asked why the measures are coming in next Monday, which is several days' delay, in contrast to Bolton, which was given 24 hours' notice of a new and quite restrictive local lockdown. Better communication on that is key.

That said—please bear with me convener, because I want to go into a little bit of detail, so this might take a few minutes—it is crystal clear from the University College London social impacts survey and others that public support for the Government's approach in Scotland is significantly higher than it is in England and other parts of the UK. Scotland is at the top of the graphs for that, and that has been the case since early in the pandemic.

In recent months, across the UK, including in Scotland, we have seen a declining gradient. Public support for the measures that are being put in place, and for the Government's messaging, is declining. Support is lower among men than among women, although not in all groups of men, and it is slightly lower among young people, and compliance is lower among young people. That is not unusual. If you look at any risk behaviour or patterns in understanding Government policies, you will see that that is often the case.

We need to take a nuanced approach to communicating to different groups in order to maintain support. I am very concerned about the next few months and about potential unrest. We are seeing that around the world. Groups are spreading misinformation and are gathering—as we have already seen in Scotland—to express distaste for, or distrust of, the messaging and the guidance that has been given. We will have to be very careful to keep on top of that. History shows that, following pandemics, there is social unrest.



There is research on that issue and we need to be cognisant of it.

Shona Robison asked how we enhance engagement. We need a stratified, targeted approach to communicating to different groups in the population. How we might communicate to older people who are shielding will be different from how we communicate to young people in school or to those who have just left school, and it will be different from how we communicate to people from different ethnic minority backgrounds. We need to support our third sector and community groups and others to make sure that they have adequate resources to diffuse or disseminate the public health messages appropriately to their communities, and we need to build engagement and ownership. Research shows that having a tailored, segmented approach rather than national campaigns is important.

Sorry for the lengthy response. I hope that it was helpful.

**Shona Robison:** Thank you for the fascinating information, Professor Bauld.

I will also ask about the balance of risk. It strikes me that, as well as the numbers going up, we are also entering a difficult period of enhanced risk, whether due to students going back to universities or to more people going back to offices, all of which give the virus the opportunity to spread.

Helen Martin, do you share that concern, and do you think that it is important to reiterate the plea that, if people are able to work from home, they should do so in order to reduce the risk of spreading the virus, particularly in offices? I am interested to hear your view on the issue.

**Helen Martin:** Absolutely. I could not agree more. Our position is very much safety first. If working from home is working, there is no reason for anybody to return to offices over the next period. Just now, we have a working group that is looking at the issue, and we have been taking evidence on the economic impact of office closures. The position is not as clear-cut as the debate might currently suggest. There is a lot of discussion about the economic impact of offices being closed in city centres, but another element is the displacement of economic activity into town and rural locations, where it is supporting the economy in those regions. The debate might suggest that office workers working at home is a clear economic drag, but the position is not that clear-cut. In some ways, it can boost the economy of certain local areas.

Equally, we are very clear that the return of office workers could put severe pressure on public transport, which is a particular risk area, given that it involves people being within 1m of others—potentially strangers—in an enclosed space. It is

not good to see a peak around commuting times. Such a peak does not currently exist, but, if office workers go back, we would be likely to see that pattern of behaviour re-emerge, which would be very negative indeed.

We also have to think about the types of office buildings that people would be returning to. Some buildings do not have windows that open, or they have air-conditioning systems that recirculate air. Those factors are potentially quite problematic as we move into winter. If it is unnecessary for people to be in those spaces and they are working effectively at home, we think that, on balance, for the public health good, people should continue to work from home.

**Shona Robison:** That is my questions finished, convener. I wonder, though, whether Helen Martin would agree to share that research with the committee, once it is completed.

10:00

**Helen Martin:** Yes, that should be fine. I can take that request away with me.

**The Convener:** Thank you. I am grateful for that offer. I turn next to Christine Grahame for a question.

**Christine Grahame:** Thank you, convener. I am obliged to you for letting me join the meeting. I have found it extremely interesting, and I wish that I had come to this committee before.

It is interesting that the data on transmission shows that it is often related to gatherings in households and so-called house parties. However, I want to focus on commercial house parties or large gatherings—raves and things like that—and put that into the context of what I think Professor Bauld called a segmented approach when regulations are introduced or enforced that take away some liberties. I stand to be corrected on this by Michael Clancy or Professor Bauld, but my understanding is that those who attend a large house party or rave are subject to Covid regulations and can be fined, if necessary, by the police, whereas those who organise such large gatherings or permit them to be organised in a place are not subject to Covid regulations but, in fact, have to be pursued under the criminal law, which the police had to do for a gathering of 300 people in my constituency recently.

I am looking at deterrence rather than the police having to be involved all the time. My questions can be responded to by any of the witnesses who think that it is relevant from a public health or legal point of view. Do we require regulations that are targeted at those who organise or permit to be organised commercial large gatherings or raves? Could substantial fines or confiscation of profits be

considered for those people, given that it seems that we are going to get tougher? Would that reduce transmission in a substantial way, given that, as far as I know, track and trace is almost impossible? Would the approach that I suggest have public support? I heard what Professor Bauld said about unrest and so on, and I agree that we have to take the public with us. In the context of what I have outlined, what is your view on extending regulations, particularly as we get into the dangers of winter and people becoming restive?

**Professor Bauld:** Obviously, I cannot comment on the nuanced differences between those two aspects of how the law works, but I understand Christine Grahame's point from a public health perspective. Those large indoor events are highly irresponsible at the moment. The people who attend those events are frustrated and want life to return to more normality and to be able to socialise, see their friends and enjoy themselves, particularly if they are back in education or work. I understand that and we are concerned about it in the university sector, as you would anticipate.

However, I think that it is correct that, in terms of pursuing or using regulation or the law to penalise people, it is entirely appropriate that there should be much more severe consequences for those who irresponsibly organise those events, because the people attending would not be there unless they had been organised by somebody. If there is a mismatch in the way that Christine Grahame highlighted, that needs to be dealt with.

I return to my earlier point, which I made in the opening comments that the convener asked for, that enforcement and penalties are useful from a public health perspective because they enhance compliance. As Helen Martin said, in the case of face coverings, if the public know that there will be a consequence if they do not follow the guidance, compliance increases. We see that consistently with any public health topic. Those who organise large gatherings need to be cognisant of the fact that doing so has consequences. Of course, people want a profit and they do not care about public health when they are making a profit. Christine Grahame's question about that is a very good one.

**Michael Clancy:** Christine Grahame has raised an interesting and topical matter. The Law Society has not thought about it very deeply, but I am aware of the situation in England and Wales, where raves and house parties have been a problem recently and have been dealt with by the Health Protection (Coronavirus) (Restrictions on Holding of Gatherings and Amendment) (England) Regulations 2020, which can impose on the organisers of such events fines of up to £10,000. That is a pretty hefty fine for contravening the

prohibition on gatherings of, for example, 300 people. That is not the situation in Scotland, as Christine Grahame has pointed out. It might be worth looking at those regulations as they apply in England and Wales to ascertain whether there is any gap in our provisions that could be filled by something similar. I bring that to the attention of the committee and perhaps others will hear the message, too.

**Christine Grahame:** That is very helpful, because I was not aware of the English regulations.

**Willie Rennie:** My question is for Professor Bauld and is on the clarity and simplicity of the message. In England, there has been a change in the number of people who can meet inside and outside—the limit on gatherings is now six. There have been increased restrictions in the west of Scotland that affect up to 1 million people. However, this weekend, we are going to restart having spectators viewing football matches—in two cases—and just last weekend we had a trial rugby match with spectators. Does that add to the complexity and potentially lead to mixed messages as we move through the different phases?

**Professor Bauld:** That is a good question. Again, we can see from the data that has been pulled together from the surveys that, as countries move out of lockdown—this is the case in lots of other countries—the messaging becomes more complex and people's understanding becomes more limited. The best example is the first one that Willie Rennie gave. I am spending almost all my time on this topic nowadays, but if he were to ask me to rehearse the number of people who are allowed to meet in which settings, across the different devolved nations, I could not tell you the answer quickly—I have a rough idea of what it is and I know exactly what the situation is in Scotland. However, that level of complexity causes confusion, particularly in the UK.

Willie Rennie asked about sporting events and balancing those with on-going restrictions in localities where there are spikes, which is something that I expect to continue. We have to strike a balance in the coming months between living with the virus—because it will be with us indefinitely even with better treatments and a vaccine—and not crippling the economy further. I am no expert on sport in Scotland, but I understand that it is an important part of our economy and of people's lives. There are ways in which we can get those events running again, with very limited numbers of spectators and as safely as possible, given that they are largely outdoor events. As Mr Rennie knows, that will require clear guidance and clear support for those who are responsible the venues and premises. I am not

opposed to opening up those sectors of the economy if that can be done in a controlled and measured way.

As Helen Martin said, the biggest risks are in socialising indoors and in hospitality venues, where there may be breaches of rules on what people can do, and in unnecessary indoor working in venues that have poor ventilation or air conditioning, which, from the data that we have seen, will make things worse. We need to be very careful about those things.

With sporting events, as long as the guidance is followed, we should not abandon them; we should try to get them restarted. The same goes for concerts. As you have probably seen, there was an interesting trial in Germany to look at how to run a live concert with limited numbers and face coverings. That sort of approach would allow some of the arts to get up and running again. It is about co-existence, and we have to strike a balance.

**Willie Rennie:** I will move on to whether we are putting in place effective public health and control measures. I am really concerned that we have gone from what was almost elimination to having restrictions that affect more than a million people in a large chunk of our country.

I will focus on the contributory factors of the quarantine measures and spot checks and on the test and protect system. Do you have confidence in both of those measures? There are reports of non-compliance and of people being missed by quarantine checks. I am interested in your view on that.

**Professor Bauld:** The crux of the issue is this: how did we get to where we are now? The elimination strategy—zero Covid, as it is often called, or maximum suppression, which is probably a better term—is definitely what the Scottish Government has been trying to pursue. The data for June and July, in particular, and to a lesser extent for May, shows that, as a nation, we were very successful in getting the numbers down. We did well, or reasonably well, during the summer, but the problem is that the numbers are now up again. That was not unexpected; indeed, most of us expected it.

The main drivers for that were as follows. As the virus was not totally eliminated as it was in the Faroe Islands and New Zealand, it was always potentially going to spread again when people started moving around more, and that is exactly what has happened. Another point is that we cannot cut ourselves off, and travel has been a problem. It is clear that people coming back into the country have brought the virus with them—we have specific examples of that—and that quarantine rules are not being followed.

You raised two issues: test and protect, and quarantine. You asked whether I think that test and protect is working. From the data that I have seen, and from discussions with my colleagues who are involved in the system, I think that it is working very well, as much as it can do, but there are sometimes problems that are outwith the teams' control.

The first part of test and protect is test, and that is currently where the problem is. The problem is not in the contact tracing—the teams are highly skilled, and they are doing that to the best of their ability. We will soon have the app, which will add to that. However, if we cannot get rapid testing, we really are in trouble. The situation that we have seen of people not being able to access tests is worrying. England is in the middle of that right now—there is clearly a problem with laboratory capacity.

The Scottish Government made a commitment to get up to 60,000 tests a day, but yesterday we did 19,000 tests, so we are nowhere near that figure. Testing is crucial. We need mass testing and more testing. The committee and others need to keep on communicating that message.

I know that it is not just Scotland—we are reliant on a UK system as well—but we really must improve our capacity and ability. We also need to move with technology. I am talking about a group-testing approach, where we put samples together and they are tested together to see whether there is no virus in 20 samples. Saliva testing, which is much less invasive and more tolerable for people, will also now be available. We need to use those methods.

I have spoken publicly about quarantine on several occasions. Last week, a good paper was published on a UK study in which only 25 per cent of people who were advised to self-isolate reported that they were doing so comprehensively. I can understand why it might be tough for someone to self-isolate, especially if they do not have enough resources. Incoming travellers are not necessarily following the guidance—we have seen examples of that—and the penalties and enforcement, as a follow-up, are pretty limited, although I cannot comment on that in detail.

Looking ahead, we will require airport testing. I know that the Scottish and UK Governments have been honest about the fact that there are key questions around the timing of the second test in particular. Would the test be done on day 5 or day 8? What proportion of cases would be missed under each of those approaches? I accept that there are genuine scientific questions on airport testing, but other countries are doing it.

The bigger reason why we do not yet have airport testing is to do with infrastructure. We do

not have a system that is operating at scale in the community, so it is a big challenge to add a layer—a very complex new system—on top of that. However, I am relatively confident that we will have to embrace that in the future, because mandatory airport testing and repeat testing will minimise the risk of people not following what is essentially voluntary quarantine. I think that there are problems with that.

10:15

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** My first question is for Michael Clancy. Lord Carloway says in his letter to the committee:

“Ensuring that the administration of justice does not grind to a halt due to the backlog in cases demands inventive and enduring political solutions.”

Will you give us your perspective on where we are with that? Are we making progress with inventive ways to resolve the huge backlog, particularly in criminal cases?

**Michael Clancy:** The Lord President is correct. He ends his letter by saying:

“We are doing what we can, if others do what they can then I am optimistic the challenges are readily surmountable.”

That points to what we talk about in our submission to the committee and in the letter that the president of the Law Society, Amanda Millar, sent to Adam Tomkins in his capacity as convener of the Justice Committee. All the agencies in the justice system—the courts, the Scottish Courts and Tribunals Service, the Law Society, the Faculty of Advocates, the Scottish Legal Aid Board, the police and the prisons—have roles to perform in making sure that the justice system works.

One of our guiding principles in looking at coronavirus legislation has been to try to envisage a justice system in which people are kept safe while, at the same time, we uphold the interests of justice and the rule of law. The innovations that we are looking at include increased use of legal technology and technology in general, including video technology and other such aspects. We are looking for creative solutions.

The Law Society’s letter to the Justice Committee states:

“We fully agree that the greater use of technology provides workable solutions.”

Those include

“the possible use of remote balloting, greater utilisation of obtaining evidence on commission, the public being able to hear trials remotely”—

that is important for compliance with article 6 of the European convention on human rights—and the use of

“pre-recorded evidence and remote links at police stations for witnesses to give evidence.”

All those things will help to make it easier to run trials by reducing the need for so many people to attend court.

The point about the balloting of jurors is that, in the olden days, before the crisis, jurors attended as they had been requested to in the notices that they received, and there would be several times the 15 people who were needed. Jurors would then be found by balloting the people who had attended.

Of course, all the new technology has to work. It has to be effective, and there has to be adequate training so that everybody who is involved in the structure knows how to use it.

There are issues around the vulnerable accused. Lots of our legislation deals with vulnerable witnesses, but the vulnerable accused may not be as well equipped as some witnesses are, and they may not be at liberty. We must think about the rights of the accused person and about how they can get adequate access to a solicitor and advice on what to do in the situation in which they find themselves.

The introduction of virtual custody courts has highlighted the issues arising through an earlier lack of consultation. We published a report on the matter, which said that there may be potential advantages in custody courts beyond the immediate need for Covid-19 safety measures, although there are significant practical problems arising from the pilot, which need to be ironed out. We are pleased that the Lord President has now recognised the need to address those by ceasing any Scotland-wide roll-out before the Glasgow pilot, which has now started, is monitored and evaluated.

I hope that that answers your question.

**Willie Coffey:** That was a very full reply. We are hearing most of what you are saying—we have our own issues with the technology in conducting our meetings.

I want to follow up by asking whether the possibilities that the online or virtual solution offers us are overcoming issues and are now becoming the favoured option, rather than having cinema or hotel settings for administering court proceedings. Do we not need even to think about that any more? Is the online solution the direction of travel that we will probably take?

**Michael Clancy:** It is important to realise that the justice system is a big structure, with lots of moving parts. [*Inaudible.*—in others.

**Willie Coffey:** We lost you there.

**Michael Clancy:** You may not have heard my comment that there was a pilot in Glasgow sheriff court of a virtual custody court, and we are looking forward to the evaluation of that before the courts can roll it out.

We cannot immediately leap to a virtual solution, because a lot of things have to be put in place for that to work across the board. That means that we will still need the use of cinemas or large venues, which was a solution that we suggested to Lady Dorrian's jury trials working group. That still has to go on, because our court system still has to function in a way that is safe for everyone: for jurors, witnesses, court staff, judges and the lawyers involved. That is a key feature.

There may be some future point at which there is a preference for virtual courts, but we are not quite there yet.

**Willie Coffey:** My second question is for Linda Bauld. You must be aware of the argument and debate surrounding vitamin D. In a submission to the committee, Helga Rhein tells us that people in Finland

"have 2-3 times higher vitamin D blood levels than people living in the UK"

and that

"Finland has no excess Covid19 deaths".

She makes a causal link between those two things. Could you shed some light on that for the committee? Is there a case for making provisions to increase vitamin D among the population? Would that help?

**Professor Bauld:** When it comes to attributing Finland's differences to just vitamin D, I would not say that that causal link is clear. Finland has done lots of other very good things in its public health response, as have the Nordic countries generally, despite what has been happening in Sweden. Those countries have had lower numbers overall.

However, there may be something in that point. The science on the issue is still emerging. We know how the virus enters the body, but we do not yet fully understand all the biological mechanisms that are involved in how it affects our health, both in the immediate term during the acute illness and then in recovery. So-called long Covid appears to be an increasingly big problem that we will have to face.

There is some evidence that vitamin D might be helpful. I emphasise that this is not my direct area of expertise, but one recently published study

shows that some of the mechanisms might be disrupted by vitamin D levels and that, therefore, there might be some protection for people who have adequate vitamin D levels. We also know that vitamin D is important more generally, particularly for some groups of people, and that having access to that vitamin is important for immune response. Vitamin D is not invasive and can be provided to the population safely at recommended doses, particularly to older people.

I read Helga Rhein's evidence. Even though there are unknowns and scientific questions, if we added that measure to the others that we are pursuing, I cannot see that it would do any harm or be contraindicated for particular groups. Helga, who is a general practitioner, has raised a useful point, and it would be good for the committee to ask for the issue to be explored further, particularly when we are expanding our flu vaccination programme. The two in partnership might be particularly useful for higher-risk groups.

**Willie Coffey:** Helga specifically mentioned care homes and care home workers as potential beneficiaries of that during the winter months. Would that be sensible?

**Professor Bauld:** I would not be opposed to that at all. As we move forward, particularly when we have higher rates of the virus in the community than we would wish, we need to look increasingly at how we can maximise protection of the groups that are most vulnerable. I do not suggest a return to shielding; I suggest that we consider other measures and whether we could make interventions of that type or others. It would absolutely be good to raise that with the Government and, crucially, with the chief medical officer to get his views.

**Monica Lennon (Central Scotland) (Lab):** I will direct my first question to Professor Bauld, but others can respond if they feel that they have something to offer. With cases rising again in Scotland, do we have enough information and data to make decisions about what restrictions and emergency powers are still required? For example, we know that local lockdowns are increasingly happening at local authority level, but data is still available only at health board level, which does not always help with public scrutiny.

To go back to the point that you made to Shona Robison about public buy-in, people need to believe what they are being told by the Government, politicians and so on. How could that situation be improved? Could anything else be done to improve the availability of test and trace data to inform decisions about local restrictions and further regulations?

**Professor Bauld:** I hoped that I could raise with the committee some of the ways in which we could

improve the transparency and availability of some of the data. The dashboard that Public Health Scotland produces is excellent, and I know how hard all the analytical teams have been working at scale. There are fantastic researchers and experts working on that, not only in Public Health Scotland but in the NHS boards and other bodies. They are to be commended for their efforts. It has improved hugely and is very valuable for researchers and others.

However, there are gaps. The first one, which you pointed to, is that there is a need for reporting the data by local authority as well as by NHS board. You can drill down into that. If you go through all the tables, it is possible to figure it out, but providing that up front would be useful, particularly for local authority partners. Therefore, let us do that, because it is not difficult.

The second thing that I would like, which is probably a longer-term ask, is more transparent age-specific and sex-specific data for cases, hospitalisations—as you know, there is an issue around how we define people in hospital, which I understand will be resolved—and intensive care unit admissions. Age and sex-specific data should be more readily available, although you can get it if you look for it. Throughout the pandemic, it has been clear that there are differences by sex and age and, as we saw in Public Health Scotland's useful report, for ethnic minority communities. It would be useful to have more of that data readily available, for tests, cases, hospitalisations and deaths. All-age combined data is not sufficient.

10:30

On test and protect data, which you mentioned, what we are getting now is better than it was, but I would like to have publicly available data on not just the proportion of contacts who are reached but the time that it takes for people to be contacted and what happens with those contacts. Obviously, they are all advised to self-isolate, but are people following that guidance? It could even just be data from a sample. What is the adherence, understanding and compliance? In other words, is it working?

The final thing on test and protect is that we are testing symptomatic and asymptomatic people. Most people who are tested are symptomatic. That is the public, because they are coming forward for tests. A lot of other people—care home workers, NHS staff and so on—are now being routinely tested and are therefore not symptomatic. That is the asymptomatic group. I would like to see a clearer breakdown of those two groups, because they are quite different populations. That would give us a sense of how many people are experiencing symptoms and why they are coming forward for tests.

Those are the main things that I wanted to cover. There are a couple of other points on data that I have not raised because of limited time but that I could send to the committee. They are issues that other researchers have raised. Thank you for that question.

**Monica Lennon:** That is very helpful. Any written follow-up would also be helpful, because the cabinet secretary will be appearing at committee next week. I have a supplementary for Professor Bauld before I raise another matter. That was a helpful run-through of the existing data gaps. Can you give any examples of other countries that publish data by age, sex and ethnicity and of how that data has been used, including to inform public health measures?

**Professor Bauld:** A number of countries do very well on the data front. I would need to trawl into that in more detail but I know that good quality data is available in Germany for some of those measures. When New Zealand put together its equivalent of the public health dashboard earlier in the pandemic there was more information there. The Canadians provide it by province and federally, and again there is more data there. There are probably a number of examples of where researchers are able to access that data.

As I say, much of that data exists here, with the exception of some of the things that I mentioned, but it would help if it was reported more openly so that people would not have to trawl through huge Excel tables, which is what we often have to do at the moment.

**Monica Lennon:** Thank you. We all want to improve transparency where possible.

I turn to the issue of adults with incapacity, so my question is for the Law Society of Scotland and the Scottish Human Rights Commission. I note that it has been welcomed that the provisions are due to expire at the end of September. However, we have had written submissions that express concern, including the submission from the centre for mental health and capacity law at Edinburgh Napier University. Have witnesses assessed the impact that the provisions have had on adults with incapacity for the duration of the emergency legislation so far? Do we have enough information on that and is there any independent assessment or information gathering about how many people have potentially been affected by moves to reduce delayed discharge, for example?

**Michael Clancy:** The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020 refer to the provisions on care of adults with incapacity in paragraph 11(1) of schedule 3 to the Coronavirus (Scotland) Act 2020, which have not been commenced yet.

We expressed concerns regarding paragraph 11(1) and called on the Government to confirm that the provisions would not be brought into force during the course of the debates on the Coronavirus (Scotland) Act 2020, on the basis that to do so would cause

“serious and unnecessary violations of ... human rights.”

In that context, we were particularly concerned that the modifications in paragraph 11(1) could cause problems in the context of article 5 of the European convention on human rights—*[Inaudible.]* It says in the policy note on the regulations:

“the Scottish Government has examined very carefully the considerations in relation to human rights”

in determining that the provisions should expire early. Therefore, we were quite content with that decision.

I hope that I have covered the point. You will, no doubt, let me know if I have not done so, Ms Lennon.

**Monica Lennon:** Thank you; that is helpful. I do not know whether you have had a chance to see the written submission from the mental health and capacity law team at Edinburgh Napier University, who raised further concerns, saying:

“We continue to be very concerned that since the start of the pandemic adults who lack capacity may have been discharged or moved”—

presumably from hospitals—

“without due legal process in what appears to be a violation of Articles 5 and 8 ECHR and 12 and 14”

of the United Nations Convention on the Rights of Persons with Disabilities.

Do you have anything to say on that? Perhaps I have not fully understood. We would be happy to hear back from you in writing, if that is more appropriate.

**Michael Clancy:** I think that, in all circumstances, it would be better for me to have your question particularly considered by our mental health and disability committee. It is very interested in those issues, and we have good relationships with those at Edinburgh Napier University, so, if you do not mind, I will do that.

**Monica Lennon:** Thank you, Michael—that would be helpful. Sarah Booth, apologies, as I think that you wanted to respond to my earlier question to Professor Bauld. If you want to pick up on that question first, that would be great.

**Sarah Booth:** Thank you. Coming back to the data point that Professor Bauld spoke about, we think that it is key to be able to collect data in relation to a wide variety of issues. One topic that we have not spoken about thus far, and which I

can go into more detail about, is the data on those who are in pre-trial detention. We cannot provide an analysis of how many people are affected by those provisions, so it is absolutely vital that the committee is able to monitor those issues and ensure that pre-trial detention can be better monitored and the people affected safeguarded.

My apologies; my screen seems to have frozen. Can you still hear me?

**Monica Lennon:** We can still hear you.

**Sarah Booth:** Perfect. We think that it is vital that the committee be able to gather information on pre-trial detention. I can talk in more detail about our particular concerns, if the committee wishes to hear them.

Coming back to the question about adults with incapacity, I echo the comments of my colleague Michael Clancy. We are delighted that paragraph 11(1) will be expired. As Michael Clancy said, under the UNCRPD there is a requirement for state parties to provide disabled people with access to the support that is necessary to enable them to make decisions. As a result, we are supportive of those provisions being expired.

The commission conducted research into the impact of Covid-19 on social care in Scotland—the full report will be available at the beginning of October. During the process of gathering the information, we spoke to a wide range of actors and organisations involved in social care, such as social care providers, disabled people’s organisations and mental health professionals. As part of that process, we found that there was a profound impact on the way in which social care support has been delivered in Scotland, which has led to significant gaps in the realisation of rights for people who need access to and rely on social care support.

On the evidence about the use of the powers, paragraph 11(1), which would remove the need to seek the views of adults with capacity and their families, has not come into force. However, we found that one interviewee, a mental health professional, was concerned about the test for triggering the provision and felt that how decisions would be made was unclear. They said:

“Where do we use it, after we gather the evidence, is it 5 cases or 6, or is it a trend which then triggers the legislation, it’s very unclear. They were gathering evidence, but there were no clear mechanisms of how to do that.”

That demonstrates the confusion that surrounds the legislation and what would bring those measures into force.

The commission has not seen any pressing need to justify dispensing with the duty to take an adult’s wishes and feelings into account. That is

why we are pleased to see that those provisions are not used.

We do not have any data about whether, for example, professionals were moving people from hospitals to residential settings without their consent. We think that having the ability to see that data and find out what has happened in individual cases and whether people's rights have been ignored is a vital part of the scrutiny of the measures.

I can address the committee on paragraphs 11(2) and 11(3), on non-guardianship orders, if that would be of use.

**Monica Lennon:** I am happy for you to do that, but I will be guided by our convener with regard to how we are doing for time. I have no further questions at this point.

**The Convener:** Given that a few members still have questions, it might be better if Sarah Booth could put down her thoughts on those provisions in a brief written submission to the committee. Is that acceptable, Ms Booth?

**Sarah Booth:** Yes, absolutely.

**Maurice Corry (West Scotland) (Con):** Professor Bauld and Michael Clancy, do you agree that the regulations bring sharp clarity for the public—the issue in hand—and build on the guidance that was given by the Scottish Government initially?

**Professor Bauld:** Absolutely. I reiterate my previous points about the fact that, in a crisis of this scale, it is absolutely appropriate that there are regulations and that they are extended, for reasons relating to all the excellent examples that the other witnesses have provided in relation to how the legal system operates, issues in the workplace and so on. Those examples demonstrate the need to have not only regulations but, unfortunately, penalties associated with breaching different parts of the guidance, which is about keeping people safe. To be brief, my view is that that is entirely appropriate.

10:45

**Michael Clancy:** Thank you very much for the question, Mr Corry. We covered some of these points earlier in the discussion. It is crucial to have a legal structure in place following the coronavirus legislation—the two Scottish acts, the one at UK level and the hundreds of regulations that have been made cumulatively under those acts, which deal with important issues about our liberty. It is important that we have regulations that ensure that the actions of Government are lawful, proportionate and time limited, as we said earlier.

There is, of course, a distinction between guidance and regulation. Advice—albeit that it is given by highly placed people in Government and their advisers—is advice, not law. It is possible for people to say, “I have a different view about advice.” It is not necessary to take advice.

It is about how the guidance is employed. The police have a structure for trying to engage with people whom they think are contravening the regulations. First, they point out to people that the guidance says that a mask should be worn in a certain situation—or whatever it might be. If there is resistance to accepting the advice, the police then ramp it up to reflect what the law says about such things. It is about the tone of the guidance, the way in which it is used as a precursor to—*[Inaudible.]* That is a coherent approach to taking this forward.

**Maurice Corry:** Do you agree that, running parallel to that, there is a need for effective communication to ensure the successful implementation of the regulations, and a need to target the sectors and populations in the geographical areas of the country where the issues are particularly bad?

Professor Bauld's reference to long Covid gives me a slight cause for concern.

**Professor Bauld:** That is absolutely the case. Shona Robison made the point that we are in a difficult period and, given the complexities of the guidance and regulations, clear communication is even more important than it was earlier in the pandemic. As I said, I very much welcome the ongoing daily briefings. They are absent at a UK level, but we still have them. They are a helpful tool.

Unfortunately, lots of people will not be tuning into the daily briefings and might be relying on other ways of obtaining information. It is important that other agencies are adequately resourced to be able to convey public health advice and the detail of the regulations to their populations.

Maurice Corry raises a good point. When local restrictions are imposed on an area, we might need to provide additional resource and support for agencies in that area. That resource could be used to fund door-to-door visits or to purchase local radio station time. Local radio is an important way to communicate, particularly with communities who listen to certain stations, including those in their own language. We need more nuanced communication.

The inequalities relating to Covid are stark. The more deprived parts of our country have already been badly affected not only by Covid directly but by the unintended consequences of Covid, such as lack of access to normal healthcare and so on. Those communities, in particular, need resources.



I know that the committee is not looking at furlough, sick pay and other matters that are not devolved, but I want to emphasise that one of my big concerns—and one that we in public health all have—is that people are simply not going to have enough resources in the coming months to weather the storm, whether it be Covid or not.

What is concerning me about long Covid? There is a new paper from Italy today that looks at Bergamo, where they are bringing back in the people who had Covid in March and April and were hospitalised—I emphasise that those people would have been more unwell. About half of them have on-going symptoms and are struggling to cope with a whole variety of problems. The NHS is going to need to make sure that it can support such patients, and I know that the Scottish Government is looking at that closely.

**Michael Clancy:** I agree with what Professor Bauld has already said. At the beginning of the lockdown, the four-country approach meant that the regulations were pretty much the same from Land's End to John O'Groats and from Berwick-upon-Tweed to Belfast. That coherence, however, has broken down as each of the countries that make up the UK have developed their own coronavirus legislation, and there is a significant amount of it in each jurisdiction.

That, of itself, if not carefully communicated, could create circumstances in which people are confused about what law applies to them. I therefore echo Professor Bauld's comments about how proper, clear and effective communication about the legal arrangements affecting people in all four jurisdictions is essential. That will then clear up issues around whether we are to stay alert or stay at home, which is the famous example from early May, when people just did not know what jurisdictions were affected. It also creates a need for jurisdictions that do not have such provisions as stay alert to then say, "That does not apply here." Of course, as people travel across the country, they might encounter different regimes from the ones that are local to them, and that also has to be clearly communicated. To coin a phrase, it is about communication, communication, communication.

**Maurice Corry:** I have one final question for Professor Bauld. You mentioned airport testing; I must declare an interest as a member of the Glasgow airport consultative committee. You talked about infrastructure problems. What are those problems as you see them?

**Professor Bauld:** I was just speaking in general terms from a non-expert position, as I am not involved in any of the procurement or the set-up of such services, and I do not underestimate the scale of the challenge. I was trying to say that I know that the airports themselves would be willing

and able to set some of this up, but they will need Government support and involvement to do that. It should not be separate from our national testing system; it needs to be integrated.

At a time when we are still trying to expand testing at scale in other settings—I mentioned the numbers in Scotland's testing strategy—I would not be surprised if the effort that would be required to get that running in all of Scotland's airports might be an additional demand that is not a priority at the moment, because we are trying to get some of the other parts of the testing system operating at scale.

I was just making that general point; I am sure that others will be more expert in being able to point to exactly what steps would be required to put that in place, and what the implications would be for other parts of our testing system.

**The Convener:** Before we move on to the next question, I believe that Helen Martin would like to come in on some of those points.

**Helen Martin:** I would like to comment on the issue of consistency of message, which will be vital as we move forward. Workers keep getting different messages from their employers about the standards in their workplaces that are often out of step with the wider public health message. For example, when the Glasgow lockdown was being extended and a million people were being subjected to far greater restrictions, the Scottish Government moved to put in place in the manufacturing sector a consultation on reducing social distancing from 2m to 1m. There have also been outbreaks and clusters within manufacturing workplaces.

I make a plea for people to think consistently about the message. If we continue to make holes in our public health message about 2m social distancing by saying that it is not necessary in schools and that it is okay to have 1m distancing in hospitality, on buses or in some types of workplace, that confuses the message for a lot of people.

If people do not have to socially distance when they go into work and they spend all day in an environment where the standards are not high, it is difficult to get them to maintain high standards in their own lives. I am concerned that we might see an increased tightening of the guidance on home life—for example, the guidance on how many people can come into someone's home—but a loosening of the guidance on economic life. People are very conscious of the idea that they are not just economic entities, and that they have wellbeing issues, a desire to see their family and so on.

We must have consistency of message and keep the balance between home life and

economic life. That is quite a challenge, because the desire to open up the economy as much as possible while still controlling the virus sends people in a specific direction. It is important to keep the message as consistent as possible across all areas.

**Maurice Corry:** That was very interesting.

**Annabelle Ewing (Cowdenbeath) (SNP):** Good morning. It has been an interesting discussion. We have had a wide-ranging debate about the role of emergency powers in a pandemic and the need for buy-in from citizens. In looking ahead to the winter months and wondering what that might bring, it is apparent that that buy-in is linked to trust that the Government is doing all that it can to control the pandemic.

Professor Bauld has said today and on many occasions that rapid testing and mass testing are essential. Last week, I read an interesting article in the *Financial Times* that cited Julian Peto, who is an epidemiologist at the London School of Economics. He suggested that there should be mass testing of the population—universal testing—together with contact tracing. He felt that that was the best way to control the pandemic. He specifically suggested the adoption of what he called the RT-LAMP—which apparently stands for reverse transcriptase loop amplification—technology. I do not know whether the committee has heard of that; the convener is looking puzzled and I am puzzled, too. I hope that Professor Bauld is not.

Professor Peto suggested that that would be any easy way for people to be tested, as it is saliva based and does not involve nasal swabs. He said that it would be cheap—it might cost £1 per test, or less—and would therefore be easy to roll out widely across the population, although it would not replace the need, in the event of a positive test, to go on and have a high-tech test to check for a false positive. Professor Peto believed that the sensitivity of the test was sufficient to deal with pandemic control issues.

Professor Bauld, are you aware of whether that type of testing is being looked at, here or elsewhere? To what extent is it seen as a realistic option?

**Professor Bauld:** I am not a virologist, and testing techniques are not my core area of expertise. As I have not seen that paper, I will comment only in general terms.

The technology is advancing all the time, and I am more familiar in my work with how to use saliva testing for other purposes. It is a far less invasive method, and it makes it much easier to get people to be tested. As you will know, the US and other countries are already using that approach more than we are. I would support that,

and I think that we will see a lot of development in that area.

The technology and our knowledge around testing are expanding all the time. I do not want to stray beyond my areas of expertise but, in the context of the committee's deliberations, I make the general point that getting the existing testing system working and expanded at scale is something that all members of the Parliament should continue to ask for. In addition, we should look carefully at all the emerging research and best approaches to identify whether Scotland could be slightly ahead of the game in embracing and taking advantage of some of the new technology, in partnership with our excellent research community.

Annabelle Ewing has raised an important general point, and I am sure that others are better placed to comment on it.

**Annabelle Ewing:** If that technique worked—the writer suggested that it could be carried out on a weekly basis—it would be a game changer in dealing with the pandemic and avoiding mass, blanket lockdowns, which we are fortunately avoiding at the moment compared with four months ago, although we still have the winter to deal with. I will certainly pursue the matter.

My other question is for Michael Clancy. First, I remind members of my declaration in the register of members' interests, which notes that I am a member of the Law Society of Scotland and hold a current practising certificate, albeit that I am not currently practising.

I return to a question that my colleague Willie Coffey asked, which Michael Clancy answered at some length, on the backlog facing the courts. We heard of the many developments to try to tackle that. Do you think that, if we did not approve the extension of the emergency legislation, including its provisions on justice matters, such a failure to extend would put in jeopardy the courts' functioning while we are still in the midst of the pandemic and the possibility of starting to tackle the backlog in a meaningful way?

**Michael Clancy:** It is fair to say that we support entirely the extension of the legislation. The consequences of not extending it could be—well, it is just unthinkable that it would not be extended at the present time. We need to do that to allow the current arrangements to continue while we cope with the crisis and until the crisis is much more manageable and there is less potential for the virus to re-emerge. We should continue with the law as it stands.

**Annabelle Ewing:** I thank Michael Clancy for that unequivocal clarification.

**The Convener:** Finally, we come to questions from Stewart Stevenson.

**Stewart Stevenson:** The Children and Young People's Commissioner Scotland's written submission states, on concerns that the commissioner previously raised about the detention of young people, "We remain extremely concerned". The submission also states that

"the proportion of children and young people detained on remand has increased."

What do the panel members, but Sarah Booth and Michael Clancy in particular, say in response to the Children and Young People's Commissioner's input to our deliberations?

**Sarah Booth:** We have not undertaken a detailed analysis of the provisions in relation to young people in order to avoid a duplication of mandate with our sister organisation, the Children and Young People's Commissioner. However, we note that it has particular concerns about children's panels, attendance at children's hearings and secure placements being a deprivation of liberty. We also understand that there are concerns about children and young people being detained and the fact that no or very few children and young people have been released under the early release scheme.

**Stewart Stevenson:** I am quite content with that, convener; I will let others pick up the baton.

**The Convener:** Michael Clancy, do you have an answer to Stewart Stevenson's question?

**Michael Clancy:** I would like to take it away with me and give due consideration to exactly what the Children and Young People's Commissioner has said, because my scant notes, which I made over the course of the past couple of days, do not allow me to answer Mr Stevenson's question fully.

**The Convener:** Stewart, do you have further questions?

**Stewart Stevenson:** No—that will do for now.

**The Convener:** In that case, I thank our four witnesses—Professor Bauld, Ms Booth, Mr Clancy and Ms Martin—for attending the meeting.

That concludes our business for today. At our meeting next Wednesday, we will take evidence from the Scottish Government on various Scottish statutory instruments, including the two that were on our agenda today and on which we heard evidence relating to the expiry and extension of provisions in the Coronavirus (Scotland) Acts. I thank the panel and colleagues.

*Meeting closed at 11:07.*



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