



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Thursday 26 November 2020

Session 5



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COVID-19 COMMITTEE

22nd 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)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Shona Robison (Dundee City East) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rod Finan (Scottish Government)

David Fotheringham (Scottish Government)

Professor Jason Leitch (Scottish Government)

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

CLERK TO THE COMMITTEE

Sigrid Robinson

LOCATION

Virtual Committee

Scottish Parliament COVID-19 Committee

Thursday 26 November 2020

[The Convener opened the meeting at 08:45]

Decision on Taking Business in Private

The Convener (Donald Cameron): Good morning, and welcome to the COVID-19 Committee's 22nd meeting. Our first agenda item is to decide whether to take items 4 and 5 in private. Are members content that we do so? If any member disagrees, they should indicate so in the chat function now.

No member has indicated that they disagree, so we agree to take those items in private.

Ministerial Statement on Covid-19 and Subordinate Legislation

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 2) Regulations 2020 (SSI 2020/374)

The Convener: Item 2 is a ministerial statement on Covid-19 and subordinate legislation. We will take evidence from the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell MSP. The committee will be engaging for the first time in a new formal process for Covid-19.

As members will be aware, the Scottish Government announced the outcome of the weekly review of restrictions in a ministerial statement to Parliament on Tuesday afternoon. The Scottish Government subsequently provided Parliament with draft regulations yesterday afternoon, setting out the measures that it intends to take in response to this week's review of restrictions.

This morning, the committee has the opportunity to take evidence—and, if it chooses, to comment—on the proposals. The Scottish Government will then lay final regulations that will give effect in law to the measures that have been proposed. Those regulations will come to the committee for a formal debate and vote in approximately two weeks' time, as usual. Under that process, the committee will consider the draft Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 5) Regulations 2020.

The committee will also consider a laid-only instrument: the Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020. Members are advised that the instrument is not subject to parliamentary procedure and, as such, the committee will take evidence on it from the cabinet secretary and officials for information only.

The cabinet secretary is accompanied by Professor Jason Leitch, national clinical director; Rod Finan, professional social work adviser; and David Fotheringham, head of adult social care, all from the Scottish Government.

I welcome you all to the meeting, and invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for the Constitution, Europe and External Affairs (Michael Russell): I thank you for the invitation to attend, convener.

As you indicated, we are moving to a new level and area of scrutiny, and I am pleased that we are doing so. My opening statement will deal with the ministerial statement of 24 November; the Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020; and the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 5) Regulations 2020. I shall refer to the No 3 and No 4 regulations as well. I hope to cover all those areas with clarity, despite the fact that there are so many bits to discuss.

I turn first to the ministerial statement. As the committee knows, the allocation of levels to local authority areas under the strategic framework is reviewed weekly. On Tuesday, the First Minister set out in her statement to Parliament the outcome of the third review. The reviews seek to manage the prevalence of Covid-19 in such a way as to suppress infections to the lowest possible level and keep them there, while mitigating the other health, social and economic harms that Covid, and the restrictions that are required to protect us from it, can—and do—cause. The reviews consider a range of data, local knowledge and intelligence on Covid in our different communities, and look ahead at the capabilities of the national health service to support Covid patients and to deal with other winter pressures.

As the First Minister said in Parliament on Tuesday, the national picture shows a stabilisation in the number of new cases across the country and evidence of a decline in projected pressures on NHS capacity. Every local authority is now indicating a “low” level of concern with regard to the projected use of hospital and intensive care beds. That is excellent progress, and it is vital that it is maintained if we are to meet the inevitable challenges of the winter season.

However, that picture masks some regional variation. As such, we have continued to take a cautious approach that reflects the fragility of the situation that we face and the fact that there is, as yet, no sustained evidence that we are changing the overall course of the pandemic. The specific outcome of this week’s review is, therefore, that no additional changes to the existing levels were recommended. The next scheduled review will be on 1 December, although the Government reserves the right to bring forward new regulations for one or more local authority areas, as and when the situation demands.

We remain confident that, with authority areas allocated to the appropriate levels, the measures that are in place for each level will impact positively on the course of the pandemic. However, that may take some time, and it will also have to take account of the temporary four-nation festive exemptions for meeting other households,

which were announced yesterday. Guidance for that will be published shortly—later today, I believe.

I will turn shortly to the Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020, but first I will say something about the No 3 and No 4 regulations, which were announced last week. As a result of the continuation of some worrying data and trends, those regulations placed a number of areas in level 4. The Scottish Government intends that those tougher measures will last until 11 December, but we will continue to review all areas of Scotland weekly.

The regulations moved one area of Scotland—East Lothian—down from level 3 to level 2. I hope that that change sends a message to everyone that it is possible to move down a level if we continue to pull together and stick by the restrictions and guidance. Unfortunately, the position in Midlothian has not been so positive. Since the last review, there has been a concerning rise in cases—an increase of 50 per cent—and in test positivity. As a precaution, taking into account clinical and public health advice, the Cabinet took the decision that it would not, at this time, be appropriate to move Midlothian to level 2, and it will therefore remain at level 3. That position will continue to be reviewed as part of the weekly process, and we will engage closely with the local authority on its plans to reverse the increase.

The regulations also put travel restrictions into law. Those restrictions prohibit individuals from entering or leaving a local authority area that is in level 3 or 4, unless they have a reasonable excuse for doing so. That is important in ensuring that we limit transmission from one area to another as much as we can. I am pleased to report that initial indications over the weekend have shown that those regulations are being rigorously observed.

The Scottish Government provided the committee yesterday with the draft No 5 regulations, which we intend to make and lay later today; I look forward to hearing the committee’s views on them. They will ensure that students are able to leave their current place of residence at the end of term and return to a family home or other place of residence over the break. The regulations will come into effect tomorrow, Friday 27 November.

On the Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020, I point out for context that the next reporting period under the coronavirus acts ends on Monday, and we will bring forward a report within the fortnight—or rather, within 12 days, which I think is the period required by statute.

Sections 16 and 17 of the Coronavirus Act 2020 allow local authorities to dispense with particular social care assessment duties where

“it would not be practical to comply with”

them, or where

“to do so would cause unnecessary delay in providing community care services to any person.”

The provisions cover social care for adults and children, and support for carers, and they are intended to allow local authorities to provide urgent care without delay.

In my statement on the third report to Parliament, I announced our plan for secondary legislation to suspend the use of those powers in respect of adult services while continuing to give local authorities the option to use them in respect of children’s services. Those regulations, which were laid in Parliament on 16 November, partially suspend the operation of section 16 of the Coronavirus Act 2020 in so far as it relates to adult social care and adult carers. That means that the suspended provisions no longer have effect in Scotland but are capable of being brought back into effect through further regulations, should our response to the pandemic require it. The order will mean that the suspension comes into effect on Monday 30 November.

As the convener said, the regulation is classed as “laid, no procedure”. However, I am happy to answer any questions on it, and I am sure that the chief social work adviser will be happy to do so too.

I am sorry that that explanation was slightly lengthy, convener, but it lays out what we have to consider today.

The Convener: Thank you, cabinet secretary—it was useful. Referring to the regulations by their number is perhaps the easiest way for us to avoid confusion.

I have a question about the changes to the provisions on adult social care. It is clear that we are seeing a second wave of infections. I seek clarification as to why those particular powers are being switched off or suspended at this time in the light of the rise in, or steady level of, transmission of the virus. Please feel free to bring in your officials on that.

Michael Russell: It is a question that the officials should address. Rod Finan will probably be the one who does so, although David Fotheringham might also do so—I shall leave it to them to decide who is most appropriate.

From my perspective, I made a commitment at the very start of this process—it seems an enormously long time ago now—that, when provisions were not required and we felt that they

should no longer be on the statute book, we would either remove or suspend them. We are trying to be honest in that respect.

In every reporting period, we undertake a process—we are currently going through it—of looking critically at all the existing provisions and considering whether we need them and whether they should still be in force. There is sometimes a fine judgment to be made about whether provisions might still be used but, on this occasion, the view was that it was better not to have the provisions on the statute book, because they are exceptional. On several occasions, Monica Lennon has drawn the committee’s attention to the fact that they are exceptional, and, if possible, we should not have them on the statute book.

We made the commitment that I outlined, and we are honouring it. However, it is an indication of our caution that the provisions are not being thrown in the bin but are instead being put in the drawer, which I think is the right thing to do at this stage.

David Fotheringham or Rod Finan might want to add to that from their professional perspective.

David Fotheringham (Scottish Government): To be clear, the powers are being retained in respect of children’s services. Ministers have taken into account a concern about increased demand in children’s services feeding through over the winter. Rod Finan can probably say a bit more about that.

However, as the cabinet secretary said, the feeling was that we have made a commitment that the powers will be in place for the minimum time possible. Some progress has been made and relatively few authorities are using the powers, with only four authorities using them in the past couple of monitoring periods. Therefore, we feel that it is appropriate, at this point, to suspend the powers in respect of adult services. As the cabinet secretary said, we will continue to monitor the situation and ensure that powers are available for the minimum time possible.

There is a balance to be struck between the understandable desire of carers organisations and human rights organisations that people should enjoy the full process of social care assessment that they would normally have, and the needs of social workers to move quickly in an emergency pandemic situation. Those are the finely balanced judgments that are being made.

Rod Finan (Scottish Government): From a children’s services perspective, we know from speaking to chief social work officers through Social Work Scotland that they anticipate a surge in demand for children’s services during the winter period. We want to ensure that those services are provided as quickly as possible to children and

families who require them, hence the retention of the powers for children's services. However, we will keep that aspect under review because, as David Fotheringham said, only four local authorities have used the powers, and that includes the children's services powers.

The Convener: I will move on to the travel restrictions. This is the first opportunity that the committee has had since the regulations were published to ask questions about them.

My first question is about policing and enforcement. Given the large number of local authorities and the plethora of different levels that apply, how will the Government ensure uniformity of policing and application of the restrictions?

09:00

Michael Russell: I hope that the regulations are as clear as they can be. The police have indicated—as they always do—that they will, at first, attempt to use the four Es: they will explain the rules and encourage people to observe them, and enforce them only in extremis.

The regulations provide the conformity. I do not yet have the first set of figures, for last weekend, but I am encouraged by discussions that I have had with people in my own area and by reports that I have heard from elsewhere. There appears to be an understanding that travelling from one area to another is one of the ways in which the virus spreads and that it causes an increase in infection rates.

By not travelling, we can reduce the risk not only in our own area, but in other areas. We hope that, just as a rise in infection rates can bleed over from one area into neighbouring areas, there will be a similar effect with reduction, so that when the infection rate falls in one area it will also fall in the neighbouring areas. Travel is a key issue, and ensuring that it is properly policed and that the regulations are clear is the way to reduce infection rates.

As you are an advocate, convener, I absolutely do not need to tell you that the law is applied universally, in an even-handed and regular way across the whole country, and that is what is happening in this case. It is not that difficult. Movement is restricted, which means that people should not move out of their own local authority area if it is in level 3 or 4, and likewise they should not move into those areas except if they are exempt for one of a number of reasons, examples of which are given in the regulations.

I provide a copy of the regulations to people who inquire about them to ensure that they understand all the exemptions, which are quite clear. They deal with issues like extended families

and key workers, and they can be explained. They are proportionate, and—I hope—compassionate, as we saw in the case that was raised with the First Minister in the chamber last week.

I am sure that Jason Leitch will want to say a word or two more about the regulations.

Professor Jason Leitch (Scottish Government): I thank the committee for having me here this morning. We have spoken previously about the issue that the convener raised, and Mr Russell has covered it very well. From a public health advice perspective, addressing travel is a crucial element of our response, as it has to be.

Whether a person is coming from a Greek island or from Elgin, there has to be some level of advice and, perhaps, lawful restriction to ensure that those in areas of low prevalence do not enter areas of high prevalence and vice versa. The same public health principle applies with an outbreak in a meat factory just as it does in a large community transmission area, as is currently the case in the west of Scotland.

The decision making around how that is done and whether it is enforced is a matter for others. However, I am very clear that we need to advise the public not to travel between areas. There are four active levels in Scotland. Nobody is in level 0, and the advice is pretty clear that if a person is in a level 3 or 4 area, they should not travel outside it, and that if they are in a tier 1 or 2 area, they should not travel into a tier 3 or 4 area.

The Convener: My final question is a specific one about an issue that arises across the border and has been highlighted by colleagues. In parts of Berwickshire, in the Scottish Borders, some people's nearest shopping centre is over the border. That particularly applies with regard to Berwick, which can be far more convenient for people to travel to than elsewhere. Can the Government reassure people in that situation that travelling across the border for food and supplies is acceptable? I think that that is permitted by the regulations.

Michael Russell: Essential shopping is an exemption. If people are undertaking essential shopping, that exemption would apply. The exemptions are given as examples rather than absolutely fixed things. That is important, because there is flexibility. Common sense is important. If somebody is 2 miles from an essential shop in one direction and 14 miles from an essential shop in the other direction, it makes more sense to go to the shop that is 2 miles away, as long as they recognise that that is for essential shopping only, that that is not for socialising and that all precautions must be taken.

Wherever a person is, they should look at the list of exemptions and ask themselves whether

they apply to them and to what they are seeking to do and whether they really need to do what they are seeking to do. I stress that final point, because it will be germane when we consider the issue of Christmas. Just because there are exemptions—and there must be exemptions—that does not mean that they have to be used. If a person feels better or—[*Inaudible.*]—safer, or they think that it is wiser to do something that does not need an exemption, they should think about that, too.

I think that, every time that I have been at the committee, I have stressed that it is the outcome that we are looking for that is really important. The detail of the regulations and what we are talking about are very important, but what we are trying to achieve is even more important. We are trying to slow down, stop and reverse the spread of the virus and attempt to return Scotland to another state from the state that it is presently in.

Beatrice Wishart (Shetland Islands) (LD): I want to continue the discussion about travel and ask specifically about the travel plans for Christmas. The Christmas plan means that people will have the opportunity to travel home but in a limited timeframe. There is concern that that will present considerable logistical and practical problems for service providers. I understand that the Scottish Government's plan A is to discourage people from travelling where possible. Can the cabinet secretary assure committee members that there is a plan B? How will it be ensured that the system does not become overwhelmed and that people do not become overwhelmed?

Michael Russell: I cannot assure members of that, but I ask people to take the necessary steps to ensure that that does not happen.

Beatrice Wishart is an MSP for an island constituency, and I have a substantial number of islands in my constituency. I recognise that there will be capacity issues in the transport services, including on the ferry services. It is vital that people who are planning to take advantage of the period 23 and 27 December inclusive—the period in which the regulations will be slightly relaxed—plan and book well ahead. As the member knows, there are capacity restrictions on the ferry services because of social distancing. Providing that people do that and are sensible about the matter, there should be enough capacity.

I am sorry, but I cannot guarantee things that are impossible to guarantee. However, I can say that people should consider the issue now, think ahead, decide what they want to do and put those plans in place. The guidance has been published, and it is absolutely clear. Equally, the First Minister stressed yesterday—and I stress again today—that the fact that those things are possible does not mean that they should happen.

This morning, I read that there is to be a relaxation in Germany for a slightly longer period. Mrs Merkel made it absolutely clear in announcing that that she hoped that many people would not take advantage of it.

Our approach is really clear. People should get on with it and make the bookings that they need to make, recognising that the travel window is absolute and will not be extended. They should act now.

Beatrice Wishart: You said that the travel period will not be extended. Was there any consideration of giving extra days to allow people to get to and from the islands, as has been applied in Northern Ireland?

Michael Russell: There have been discussions, but it is felt that restricting travel and ensuring that the virus is contained are of such importance that people should work within those inclusive days. There has been criticism of even allowing those days. A fine judgment is involved, but the period is 23 to 27 December for the whole country.

Beatrice Wishart: What engagement did the Government have with travel providers ahead of announcing the plan? How were the islands considered in formulating the rules for the Christmas period?

Michael Russell: I can assure you that the islands issues were discussed at Cabinet level—I was there, and I represent islands.

As far as consultation is concerned, I am not privy to the full information. It was a four-countries discussion that involved the First Minister and others. However, I can assure you that none of the decisions was taken without extensive thought. You will have seen the speculation that was rife over the weekend and into the start of this week. There has been a huge focus on the issue.

The plan is not perfect. There are some people who would argue for more, and there are others who would argue for substantially less or nothing at all. The position that has been arrived at is the compromise position, and I hope that everyone welcomes it.

Beatrice Wishart: Thank you for that. I understand that it is a compromise position, but there is genuine concern about capacity. There might be pinch points or bottlenecks in the two or three days around Christmas, with people trying to get to and from the islands and to connect with an overnight ferry service.

Michael Russell: We very much recognise that, which is why we are advising people to make their plans and provisions as early as they can.

The period in question is a period of some leeway to allow people to visit friends and family,

particularly in extremis, where people have not seen one another for a long time. It is not a licence to change the way in which we live our lives for those five days. It is extremely important that that is understood.

There are strong grounds for allowing such a period, but it should not be thought of as anything other than a slight lessening to allow something to happen. We are not talking about a change of regulations; we are not saying, “Phew! That’s over.” We must treat it seriously.

Stuart McMillan (Greenock and Inverclyde) (SNP): I have a couple of questions about SSI 2020/377. For how long is it anticipated that the regulations will be in place?

Michael Russell: I am sorry—which regulations? Are you referring to the No 3 regulations and the No 4 regulations?

Stuart McMillan: It is SSI 2020/377.

Michael Russell: Could you enlighten me as to what that refers to? I have referred to the No 3 and No 4 regulations—that is the way in which I am addressing them.

The Convener: I think that Stuart McMillan is referring to the social care regulations.

Michael Russell: Okay. You are asking about the regulations on the suspension of adult social care.

Stuart McMillan: Yes.

Michael Russell: I will ask David Fotheringham to deal with that question. As I said, the relevant provisions are now in the drawer, but they can be taken out at any time. The suspension starts on 30 November; I am not sure that there is any limitation to it. The power will exist only as long as the coronavirus acts exist. I suppose that there is a self-limitation. As long as the acts exist, the power will exist, but the power is in suspension, and we would need to use another instrument to bring it back. That is my view. Am I right, David, or have I got that wrong?

David Fotheringham: That is right. The suspension is from 30 November, but we can bring back the powers as long as the Coronavirus Act 2020 is in place. Further regulations would be required to enable us to do so.

Stuart McMillan: Thank you.

Earlier, Mr Finan indicated that there had been engagement with social work on the regulations in question. Did the local authorities specifically ask for the regulations to be implemented, or did the Government decide to introduce them as a consequence of its engagement with social work?

Michael Russell: The original regulations were brought in under the Coronavirus Act 2020. If you remember, they were brought in—correctly—because there was a view that the administration of such issues within local authorities might be overwhelmed, and it might not be possible to operate according to the regular legislation.

09:15

There is so much to that, but I will dredge what I can from my memory. I seem to remember that Monica Lennon raised a question early on during the passage of the Coronavirus (Scotland) Bill. In the first reporting session, which would have been at the end of May, there was a question about how many local authorities had used the regulations. I do not think that we were entirely clear about that then although we got some clarity thereafter that the legislation had some limited use. The view was that, if it had only limited use, it might not be necessary to keep it on the statute book. That was where we were during the second reporting period. The regulations have now essentially come off the active statute book.

If the legislation had been widely used and authorities had said that they wanted to continue to use it, that would have been taken into account. That was not the case, as far as I am aware. Of course, the children’s power remains on the statute book, but the adult power has been removed. I think that David Fotheringham indicated that only four local authorities had used it.

Stuart McMillan: That is helpful. I am very much aware of the previous legislation. I am wondering whether the set of regulations that is before us, which has been laid before Parliament, had their genesis in requests from local authorities or through genuine engagement. I am seeking clarity on that.

Michael Russell: I repeat what I said in answer to the convener’s opening question. The view that the Government has taken, which I have repeated many times at the committee, is that when powers are not required, we should not hold on to them. This legislation sits between the two views. We have suspended a number of powers before now, and we have got rid of a number of powers. That exercise is being done for the next period of reporting, and so it will continue.

The request for the power came jointly from officials and local authorities at the time of the coronavirus acts. The desire not to hold things on the statute book is a policy commitment that we made in Parliament, and we hold to it.

Stuart McMillan: My final question is about the festive period. A number of my constituents have contacted me about whether current extended

households are included. The agreement between the four nations is that we can have up to three households meeting during that period. Will existing extended households be included in the potential three households when we get to the period of 23 to 27 December, or will it be a new set of up to three households?

Michael Russell: I will ask Jason Leitch to be entirely specific about that, Mr McMillan, but I thank you for giving me the opportunity to make a really important point: the regulations continue to exist; we are not waiving the regulations. There will be a loosening of the regulations in relation to the number of families that can get together and the travel regulations, but how you operate, how you behave, the definition of a household and all the rest of it remain in force. As I said to Beatrice Wishart, this is a slight loosening of the regulations for a very limited time. If you live in Scotland, you are bound by the Scottish regulations. Perhaps Jason Leitch would like to make a point about the extended family.

Professor Leitch: I would be happy to do that, Mr Russell, but I need to ask you a question first. You said that the guidance is published. Before I answer the question, I need to know whether the guidance has been approved and published.

Michael Russell: I understand that it was published this morning, but I will seek confirmation of that.

Professor Leitch: In that case, I can answer the question. I hesitated only because I did not want to pre-empt final approvals by members of the Cabinet and the First Minister. I was not trying to hide anything.

Michael Russell: I can clarify that now. If the guidance has not been published, publication is imminent—let us put it that way.

Professor Leitch: It is certainly imminent, and the First Minister will be making a statement along those lines before First Minister's question time, as you would expect. Therefore, I will speak generically until we hear that, and then, if it is published, I could tell you what the actual answer to that question is, convener, if that is helpful. If it is not helpful, you have to wait only a couple of hours.

The Convener: That is fine. Shona Robison has kindly and helpfully indicated to me online that the guidance is published on the website, so I am sure that we will get the clerk to—

Professor Leitch: In that case, I can answer the question very specifically. Remember that, as a result of the negotiation, the four-country agreement is for three households to meet over five days across all nations. All of us agreed with that, from both a clinical advice perspective and a

political decision-maker perspective. However, there is some flexibility in how each country then defines that. For example, Northern Ireland has defined the travel period as slightly longer, and each country will have its own definition of "household". In Scotland, our guidance to the public is that one extended household will be allowed. If you watched yesterday's briefing and saw the angst that the First Minister and I expressed about the relaxation, you will understand where that decision comes from. Therefore, one of the three households can be an extended household. In effect, that takes us to a situation where the maximum number of different living arrangements could be four.

Michael Russell: I can confirm that the guidance is published, so Shona Robison has given us fully accurate advice, as she always does. What Jason Leitch has said is in the regulations. It says:

"Between 23 – 27 December, you can form a bubble of up to three households, one of which can be an extended household. However, we would recommend that you keep any bubble to a maximum of 8 people. Children under the age of 12 from these households need not count towards the total number of people counted in the bubble".

It continues:

"You should keep the numbers within a bubble as low as possible and minimise the duration of contact between different households as much as possible.

You should not change the members in your bubble once it has been formed.

If anyone in the bubble contracts Covid-19, all members of the bubble will be required to isolate for 14 days."

That is the up-to-date advice.

The Convener: Thank you. I turn next to Mark Ruskell.

Mark Ruskell (Mid Scotland and Fife) (Green): Will those relaxation regulations be laid in Parliament next week, so that the committee will have an opportunity to scrutinise them formally and to vote on them ahead of Christmas? Will a full risk assessment accompany the regulations, so that the committee and its scientific advisers can look at the rationale behind the relaxation?

Michael Russell: It is guidance, Mr Ruskell. It was published this morning, and it will be provided to the committee. I am sure that the committee can take a position on the guidance, and I am sure that it will do so. We have worked closely with the other United Kingdom Administrations, and we will continue to work with them to ensure as full an understanding as possible.

Mark Ruskell: Will we get the risk assessment behind those decisions, so that our scientific advisers can look at the decision?

Michael Russell: A lot of material is published every day on where things are. I do not know what more information that Jason Leitch knows can be or will be published. I stress the general point that we tend to publish everything that we have—all the data that we are using, and there is a great deal of it around. However, perhaps Jason Leitch will want to give us information about the scientific background to the advice. As the First Minister pointed out, there is risk attached to the relaxation, and, therefore, we should have a discussion about it. However, overwhelmingly, people felt that something was required to be done. Jason Leitch might want to add to that.

Professor Leitch: There have been lots of requests for individual pieces of guidance or advice that are simply not available in that format. There is not a risk assessment, whatever that might be, for that specific decision. There has been a series of conversations; there is all the data that we now publish on the dashboard; and local authority data is published every week, and that is updated every day for those local authorities. You can almost hear the risk assessment in what the First Minister says every day from the podium, when she describes the decision making that has to be gone through to get to that point.

I am afraid that a single document that outlines the number of people who will get the infection and the number of people who will not if we do X, Y or Z is simply impossible. I was asked by nearly every journalist yesterday at the briefing whether I had such a document. If I did, I would be the first to give them it, because I am worried about any relaxation of restrictions at any time, never mind during the Christmas period. The knowledge that we have is the same as yours, other than the fact that we bring some clinical expertise to the decision making.

Mark Ruskell: It is a bit concerning if you do not have a clear understanding about whether the relaxation will increase the prevalence of Covid or reduce it.

Professor Leitch: That is not what I said, Mr Ruskell. It is very clear that any relaxation will increase the prevalence of the virus. If we allow travel around the country and households to mix, prevalence will increase. The question is whether, inside a balanced set of decisions, that is the right thing to do, because people will do it anyway. It is a very important holiday in terms of social isolation, as well as for family time. Lots of people have been alone for 11 months, so the balance of the public health advice is that we should create a framework in which that could happen. We do not make the choices. The decision makers at a four-country level chose the brackets around which

they would set those guides and we agreed with them.

We are now in the position in Scotland where we are making some choices about what the family size should be and whether we should say, “Yes, knock yourself out. Go for it.” Our version of that is, “Think very carefully. If you need it for social isolation purposes, do it. If you do not need it, do not do it.” My parents are pushing 80. They live together and are relatively healthy and well. I will not be having them round for Christmas.

Mark Ruskell: I turn to the situation in Perth and Kinross and Fife, both of which have moved up to level 3. In the case of Perth and Kinross—

Michael Russell: Sorry—I was trying to get in to speak but had technical issues. I want to quote from the guidance again, because it is really important in the light of what Jason Leitch said. Paragraph 4 of the guidance says:

“Over the past few months, we have all made sacrifices to keep ourselves and loved ones safe. Now that effective vaccines are on the horizon and the hope of a return to more normality by next spring is growing, we must all consider carefully the risk that is associated with coming together for Christmas.”

There is an acceptance—which is quite clear from what Jason Leitch said and in the guidance—of that risk. We are saying to people that we understand that there is a risk and we hope that people will judge whether to contribute to or be part of activities that are risky.

I am sorry to interrupt you, Mr Ruskell, but I wanted to stress that important point.

Mark Ruskell: I appreciate the point.

I was asking about the situation in Perth and Kinross and Fife, which have both moved up to level 3. Perth and Kinross fell below the indicators for level 3, but an assessment was done that said:

“there is no confidence that established growth”—
in Covid—

“will be slowed or reversed”.

That is why Perth and Kinross was moved into level 3. Has that happened? Has growth slowed or reversed in the past few weeks?

In relation to Fife, two indicators put it into level 3: the positivity rate and the intensive care unit capacity. With both those local authorities, what has changed in the past few weeks?

Michael Russell: I think that Jason Leitch should address that.

Professor Leitch: Thank you, Mr Ruskell. You have the same data available to you as I have. You have the document from Public Health Scotland, which is now published every week. You can see the graph and the direction of said graph.

The only thing that I have in addition to you is the ability to talk to the directors of public health, although I am sure that they would happily speak to you as well. That is the only extra intelligence that I get, which gives us some local knowledge. Let us take the example of Aberdeen and Aberdeenshire. The numbers have been increasing over the past couple of days. However, the Grampian director of public health says that, although there are a couple of serious outbreaks in specific locations, they are contained. Those outbreaks are, of course, dangerous to the people who catch the virus there, but they are not in the broader community; therefore, the Grampian director of public health thinks that, on balance, those local authorities can maintain their existing levels and deal with the outbreaks.

09:30

The conversation in Fife and in Perth and Kinross is slightly different. I will cover the Perth and Kinross numbers for the record. My graph takes me up to 21 November—I wish that it was in slightly bigger print. Remember that we need a lag time, as the date shown is the date of the test rather than the date of the reporting of the test. That is why there is a little bit of a gap to today. The graph for Perth and Kinross has continued to rise to its current level, but very slowly. The rates per 100,000 for the past five days are 109, 115, 115, 116 and 108, so the level is stable, but it went up 14 per cent in seven days. That is why we previously thought that level 3 was needed, so as to pull the numbers down and, hopefully, turn a corner. The level in Perth and Kinross appears to have stabilised. The test positivity rate was up as high as 5 per cent, and it is now at 4.7 per cent. The rate for Perth looks as though it has flattened, but it has certainly not turned the corner.

Fife went into level 3 a little bit earlier than Perth and Kinross, if you remember. Forgive me for not knowing exactly what the difference was—it was perhaps 10 days or two weeks. The figure has gone down by 27 per cent over the past seven days, which is what you would expect if level 3 does what we want it to do and the population of the local authority areas concerned follow the guidance. They are the ones who are doing it, not us. The curve in Fife has begun to tip over. Fife started from a higher base, at 146 per 100,000 at the highest point.

Remember that the Scottish average rate today is about 120 per 100,000, down from 140 two weeks ago, so it is definitely going in the right direction. For comparison with the other three countries of the UK, Northern Ireland is at 169, Wales is at 194 and England is at 218. It is not a competition, but I mention that for transparency. Over the past two days, Fife reported levels of 110

and 106. It looks as though the rate is turning in Fife. Remember, however, that turning is not enough to get to level 2—the decrease has to be consistent and long—and 106 is still too high.

Mark Ruskell: My next question is about how we are supporting people in self-isolation. A study by King's College London found that only 18 per cent of people across the UK who had symptoms and only 11 per cent of people who had been contact traced were effectively self-isolating. Do you have figures for Scotland? Are you thinking about how we can improve self-isolation support? In New York, for example, people can access free hotels, food, care packages and personal protective equipment. That is being provided for people who are struggling to self-isolate because they do not have adequate housing or because they have other pressures in their lives. Do you not think that that points to why we have such a low rate of effective self-isolation?

Professor Leitch: New York is having an absolutely horrid second wave—it is absolute misery. My colleagues who are running that response are really struggling.

The King's College London paper—if it is the one that I am thinking of, Mr Ruskell; forgive me if I get it wrong—asked people, on a seven-point scale, how well they were self-isolating. In order to get a 7, people basically had to be 100 per cent isolating, including from their own family, and not going outdoors. Someone who lived alone could leave their home for food, for example, in accordance with a very strict definition of self-isolation—which is the correct definition; it is what we tell people to do. If someone said that they had occasionally broken the rules, so they were a 6, that is where the low percentages come from.

In Scotland, we are pretty confident, from our polling data and from conversations that we have had with people, that we are way higher than that, but we are not at 100 per cent. One of the reasons for that is exactly as you have described: the support that we can provide for people. That includes financial support, local authority support and individual family support. We have done our absolute best with local authorities, supermarkets and third sector organisations to get that number up as high as possible, although there is—absolutely—more that we could continue to do.

Mark Ruskell: What should we do, then?

Professor Leitch: Local authorities are the key. The financial support is above my pay grade, so I will leave that to Mr Russell. With the other three UK countries, we have brought in a self-isolation payment, and individual local authorities have a particular connection to those who are on benefits or in local authority housing—those who might struggle with self-isolation for financial reasons.

That local authority relationship is crucial. My reading of the situation, from the conversations that I have had with local authorities, is that they are doing a fantastic job and that they are getting better at providing that support.

The Convener: Does the cabinet secretary want to add anything to that?

Michael Russell: I will just say that we keep the issue of financial support, and particularly support for people who are self-isolating, under review and we will do everything that we can to support them. There is a range of competing priorities. I noted that the study of the mass testing in Liverpool drew attention to the fact that those in the most marginal communities were the least likely both to present themselves for testing and to self-isolate. We are very aware of that, so we address that issue as often as we can and we will continue to do so.

Mark Ruskell: On the back of that, my last question for the cabinet secretary is whether the Government is considering making the self-isolation support grants unconditional or less conditional. That is being done in New Zealand, where someone does not have to be on benefits to get the support grant.

Michael Russell: Within our capabilities, which are not, unfortunately, infinite—that is one of the problems that we have—we will continue to look at all options. I can certainly say that much.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I have a question about how we have treated smaller businesses in our towns compared to how we are treating larger businesses and stores. My constituents and local business owners tell me that they have done everything that we have asked them to do—they are very careful about arrangements in small shops, and they take customer details for track and trace. They have done everything that we have asked them to do and to comply with. However, supermarkets and big stores do not take any details for track and trace, and they are generally filled with people doing some kind of shopping. Therefore, small business owners see an imbalance there, cabinet secretary, in the impact on them compared with the impact on the bigger stores. They are always asking for an explanation. They have done everything that they can, but the numbers in Ayrshire are still relatively high. Can you comment on that and on how we can address their concerns about that?

Michael Russell: To start with, there are very strict regulations on and expectations of all stores, particularly large stores, which are classed as places for essential shopping. Those should not be relaxed, and they should be observed to the letter. If they are not being observed to the letter,

complaints should be made at the appropriate level and action should be taken. Mr Coffey, we have addressed the matter with you before: there is no question of large stores just being allowed to get away with things. Work is done in Government to ensure that stores and chains understand that. Therefore, there is no laxity, and, if any is shown, it should be picked up and dealt with very promptly.

Equally, there is no blame attached to small stores for, in some way, not doing things. It is simply that the restrictions that are applied must be effective, and we know that one of the restrictions that needs to be applied is the reduction of the virus being passed on in small, confined areas such as in shops.

Jason Leitch will be able to give you some more detail on this point, but I remember seeing some track and trace figures recently that set out the number of contacts gained through shopping. It is a matter of concern. Nobody is blaming people or saying that they have done anything wrong; it is simply that small businesses are particularly vulnerable in terms of where the virus may be passed on. We want to move through that and provide as much support as we can.

In your constituency, Mr Coffey, there will be businesses that believe they have not had enough support—in my constituency, there are businesses that I absolutely believe have not had enough support, and I constantly draw those cases to the attention of the local authority, ask about discretionary funds, talk to ministers about what funding packages will come forward and encourage those businesses to look at local authority and UK Government and Scottish Government websites to see what is available. That will continue for as long as the pandemic goes on, because there will always be people who have not yet been able to access support, and we want to ensure that they do. This is a terrible time for them—I absolutely recognise that.

Like you and every other constituency MSP, I feel that deeply on a daily basis, because we meet people who are suffering greatly and are at risk of losing their businesses and livelihoods through no fault of their own, or who have already done so. I do not think that any of us can treat that with equanimity, and we have to do our very best for those people. However, we must accept that, although the actions that are being taken are not perfect—no doubt, we will look back on some of them and say that we should have done something different—they are being taken with the best of intentions and with the intention of saving lives, primarily, as well as ensuring that our health service does not become overwhelmed and that we are protecting the most vulnerable of our fellow citizens. There is no easy answer to some

questions about the fact that some people are suffering. I wish there were, but there is not.

Jason Leitch might want to say something more about the background.

Professor Leitch: This is a tough issue, Mr Coffey. I have never liked the distinction between essential and non-essential. If it is your gift shop or your so-called non-essential shop on a street in Hyndland, it is pretty essential to you, your family and those whom you employ. It is with a heavy heart that we give advice about closing businesses.

The matter of the support package that is in place for those businesses is for Mr Russell, not me. However, I can tell you that the public health advice will be to open those businesses just as soon as we think that it is safe to do so.

I have been impressed with the ability of my local community to switch to outdoor provision, online provision and delivery. A lot of small businesses have stepped up, particularly for Christmas, to try to get some resource and revenue through their doors. What has been done has been very impressive. However, public health advisers are under no illusion about the fact that business closure is a public health problem, not just an economic problem. We issue that advice with a heavy heart, and we hope that those businesses will be open just as soon as possible. The way to get them open is to go down the levels, and the way to go down the levels is to get the prevalence down.

Willie Coffey: Thank you for those responses, but I think that the issue is more about small versus big rather than essential versus non-essential. If I go down to Kilmarnock after this meeting, I will see that most of the shops and businesses are closed—other than carry-out places and so on. People have done all they have been asked to do. They are asking me where the cases are coming from, if they are closed and people are not coming to them, and if people are obeying the regulations about household visits and so on. They then say to me that the cases must be coming from the bigger stores, due to the mixing and mingling of bigger numbers of people there. Do you think that there is any substance to that? The number of cases in Ayrshire is still at a reasonably high level—above the Scottish average and high enough to keep us at level 4—so where are the cases coming from, given that the town is near enough empty of any activity and that there is virtually no mixing and mingling of the general population there?

Professor Leitch: As I have said before, that is the most common question that I get asked. Every sector thinks that it is not happening in its sector and every individual gets surprised when they get

a virus diagnosis—every person I know who has had the virus has been surprised when they have got their positive test. Nobody thinks that it is happening in their home, their shop or their pub. The fact is that the only way to reduce the prevalence is to reduce human interaction. Therefore, you have to work your way through the list of places where human interaction happens in order to get the prevalence down. So-called non-essential retail—small shops or whatever—are quite low down that list, which is why they are closed only in level 4, not in level 3. However, if the numbers are still high, you have to tick off those final few places.

09:45

With regard to where the cases are still coming from, it is partly a matter of compliance and it is also partly a matter of a time lag, because Ayrshire and Arran has been in level 4 only for a certain number of weeks and it simply takes a bit of time for a reduction in the numbers to come through. As we just discussed, Fife is just beginning to turn a corner, and the evidence of the past few days suggests that the country is doing likewise. We think that the R rate is just below 1 and that it has been for perhaps a week. Progress is slow, but it is happening. Our numbers are still way too high—hugely too high compared with the summer—but the sacrifice will be worth it. The worst thing that we could do is allow those shops to open and then require multiple closures in the months to come. That is what we are trying to avoid.

Willie Coffey: My final question is about the track and trace mechanism. We have all had the experience of going into a wee shop and giving our name and phone number. However, we do not do that when we go into a supermarket or a bookstore. Is it just impossible to do that? Is the technology just not there? Would it create more problems than we could deal with? Constituents have asked me why we do not do track and trace in big supermarkets, so that we can try to reduce the numbers that arise from those bigger settings.

Professor Leitch: Test and protect needs proximity data, whether you are on a train, in a small shop, in a big shop or in your house. When the test and protect team phone you, you are asked where you were and who you were with. Forgive the shorthand but, if you say, "I was in Tesco, in the washing powder aisle at 11 am," it will be almost impossible to find out who else was less than 2m away from you in that aisle at that time, even if you collect names and addresses at the door. However, if, for example, you say, "I signed in at this small gift shop around 11am, and a man came in and looked at Christmas decorations beside me," that is a much easier

place for test and protect to get the information from. It is a judgment about where the information should be collected. We have to decide whether it should be collected in pubs, where people spend a long time, and in restaurants, where people might spend around 90 minutes.

Essentially, in the bigger places, it gets almost impossible to get the proximity data that test and protect needs. That is why we have the app, which is one of the crucial tools that enable us to get that data. The test and protect data that is collected at the door of places is an additional layer that the directors of public health would call on if they felt that they needed it. They do not always need it; it is simply used when the directors of public health feel that they need a map of the establishments. In some of the Aberdeen hospitality outbreaks, they looked at maps of the cafes and restaurants and said, for example, "Frank has tested positive, and he was at this table for X amount of time, so we need to find out who the people around him were and talk to them." The bigger the premises, the harder that is to do.

Willie Coffey: That explanation really helps. Thank you.

Michael Russell: Convener, before you move on to the next question, I would like to make a point. Beatrice Wishart raised the question of overnight ferry journeys. That is an example of how this committee's scrutiny is important. Since the point was raised, there has been some discussion about overnight ferry journeys, and I think that the guidance will be clarified to say that, given that the journey to Shetland is a long one, if you start your overnight ferry journey on 27 December, that will count as though you were observing the regulations. The only exceptions to the overall regulations, apart from that, would be if someone was taken ill or if there was weather disruption.

I wanted to make that point to Beatrice Wishart, to make it clear that we are trying to listen to concerns, that the concern that she expressed was well received and that we were able to respond to it quickly.

The Convener: That is a helpful clarification.

Maurice Corry (West Scotland) (Con): On the point about starting the return journey after the festive period by road, rail or other means, if somebody were to leave at 10 o'clock on the night of 27 December, for example, and return into Scotland in the early hours of the morning, would that be permissible?

Michael Russell: I would want to go away and think about that. I do not want to say that 23 and 27 December are not absolutes, because it is clear that that is what we are talking about. Beatrice Wishart made a good point, because the

Shetland ferry operates overnight. We have been quick to say that that is a fair point. If Mr Corry will leave his question with me, I will look at it, but I do not want to give the impression that the period is porous at both ends. It is not porous, and I go back to the point in the guidance that says:

"we must all consider carefully the risk that is associated with coming together for Christmas."

That risk will grow—it grows with every day. If 27 December becomes halfway into 28 December, the risk grows, and we need to recognise that. However, in the interests of fairness and to show that I will listen to all members of the committee, not just Beatrice Wishart, I will provide the committee with an answer to that question.

Maurice Corry: That is fine. Thank you, cabinet secretary. Obviously that applies to sleeper travel on the railway, as well.

My next question is for Professor Leitch. From a medical and infection point of view, how concerned are you about the relaxation of the regulations in Scotland over the Christmas period?

Professor Leitch: I wondered how long it would take for somebody to ask me that question. I am glad that you have asked it. I am concerned. I am also a human being with a family. I do not want to put too fine a point on it, but that is the balance that we have had to strike for you, me and the whole population.

My position is that Christmas is the biggest religious and secular holiday in the United Kingdom. We have, of course, come through a host of religious moments—it is Hanukkah in a week; it was Eid; it was Easter. Everybody has had to adapt for those and we will have to adapt our Christmas—and our new year in Scotland—to the restrictions.

I see a light at the end of the tunnel. I am very encouraged by the plan for vaccination. The research data is good and our logistical plan is forming. It is encouraging and good, so I do not want to put that at risk.

In the conversation that I had with my parents and sister—by Zoom, of course—I said that I would much rather have 10 or 15 more Christmases than put this single Christmas at risk. My dad said, "I knew that in my heart, but I didn't want you to say it." I think that a lot of families around the country will have that conversation. If my mum or dad lived alone and I had not seen them for X number of months, I might make a different choice. I am not going to impose my choice on you or on others.

Everybody should make that risk-based choice for themselves, and that is why we have allowed this freedom. However, the travel conversation is one such time when we should try to stay within

the guidance and not push it. We should try to restrict our plans. If you are going to do Christmas, do it for one day, not five days. If you have to travel, of course you should, but do it for social isolation reasons. Do not do it just because you can, because interaction will cause the prevalence to rise. There is no question about that.

I do not want to prolong this answer, but if you look at the Canadian Thanksgiving data, that will give you serious cause for thought. Canada told everybody to be very careful, but the prevalence went high after Canadian Thanksgiving. We fear that American Thanksgiving, which is today, will do exactly the same.

Maurice Corry: Thank you, Professor Leitch. That indicates your concerns, particularly in relation to the situation with your parents. That was very helpful.

I turn to the cabinet secretary to ask about childcare. What is permitted under the current regulations for a grandparent or grandparents in helping their families with childcare? It seems to be quite a woolly area.

Michael Russell: I do not want to add to the wool, so rather than express an opinion I will make sure that I give you the definitive answer in writing—[*Inaudible.*]

Broadly, we have tried to make sure that childcare is still permitted and covered, because we want to make sure that children can be offered normality. However, I do not want to add to any confusion. We will make sure that you get a response.

Maurice Corry: I have a final question for the cabinet secretary—Professor Leitch might want to answer it as well—which is on airport testing. How close are we to getting a solution on that to ensure that we can get some reasonable way forward on testing travellers leaving or returning to this country?

Michael Russell: I will ask Jason Leitch to talk specifically about airport testing, but I will just make a point about travel for the umpteenth time. We are discouraging people from travel, even when it is technically permitted, including overseas travel. The fact of an airport test would not mean that people could say, “Whoopee! We can travel somewhere.” That would not be the case, and I hope that anybody considering overseas travel will do so only in extremis. For example, some people have to travel for urgent business or because they have tragically lost a family member and want to be with other family members. Please do not travel if you can avoid doing so.

Jason Leitch will say a word about testing.

Professor Leitch: That would have been my first point: please do not travel for recreation at the

present time. The pandemic is global and is accelerating in five of the six World Health Organization regions. It is dangerous to visit many countries just now because people are likely to bring the virus to them or to bring the virus home. Lots of countries will not let people in without quarantine anyway, so I discourage recreational travel. However, we need to find a way out of this, and travel is one of the things that we are going to have to have a new version of.

The UK Government has announced a testing and release programme for quarantine, which we will watch very carefully. We are slightly concerned about the percentage release that will be caused by release on day 8, day 7 or whatever day it is, so there is still a bit of work to do there. In Scotland, only Edinburgh airport has announced an outbound test that people can buy now. For instance, if someone wishes to go to Dubai, that country requires them to have a test before they arrive. Our difficulty with that has always been scientific, not economic. Our public health difficulty with that is that we cannot find the incubating virus—we simply cannot find it. Even if someone gets a negative test on a Tuesday, they could still be incubating the virus and take it to Dubai on the Wednesday.

We have to be sensible scientifically about what testing will do for us inside the regime of travel that we will have to come back to. Low prevalence will allow more travel. I am sorry to come back to the same old tone, but if we get the prevalence down and we have less virus, then travel will become much more possible.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, again, cabinet secretary and Professor Leitch. Something that I look forward to now is a Thursday morning, not a Wednesday morning.

First, I am pleased to hear from Professor Leitch—he will note my interest in the subject as the MSP for Cowdenbeath—that Fife seems to be making good progress. He will recall that I asked him last week about monitoring ICU beds and so forth, and he indicated at that time that Fife was looking a wee bit like a high level 3, so I am really pleased to hear the good bit of news about that—long may it continue.

I turn to the travel guidance that was published today. Obviously we await clarification on the bit about returning home on the 27th, but I appreciate the point that those are the maximum parameters and that that clarification will be about exceptional circumstances—for example, getting to or from Shetland or the like. I appreciate that those should be the maximum parameters and not eked out over other days. However, with regard to what someone can do when they get to their bubble, can Professor Leitch clarify what that means in

terms of visiting an attraction or hospitality, particularly if someone goes from a level 3 or level 4 to a lower level? Professor Leitch can start on that and then maybe the cabinet secretary can add something.

10:00

Professor Leitch: Our fundamental advice is that, once someone is in their bubble, they have taken quite a lot of risk already. If people have joined together in potentially three households, plus maybe an extended household, up to a certain number, they have already taken quite a lot of risk.

People will have to follow the guidance for the level that they are in when they get wherever they are going and to whichever house they have decided to visit or stay in. Of course, we do not yet quite know what levels will be applicable on 23 December. We hope that much of the country will be in a lower level by then, but we just simply do not know. Therefore, I hope that people will be allowed to go to a place of worship, for example, on Christmas eve, Christmas day or whenever services are, but we would still expect them to distance, to keep to the numerical limits and to maintain hand washing and all the other elements.

Fundamentally, as part of a bubble, people should still try their best to distance within that bubble, to clean surfaces and to wash their hands, and they will have to follow the rules for the level that the area is in. We will temporarily remove the travel restriction, but the levels will still be in place in each of the local authorities in Scotland.

Michael Russell: The guidance goes into some detail on that, and I commend it to members. Issues such as tourist accommodation, hospitality and worship are all covered. However, as Jason Leitch has rightly said, the basic rule is that people will already have taken a significant risk by joining that bubble, so they should not do anything to extend that risk if they can possibly avoid it—they just should not do it. People should be conscious of that. We recognise the special nature of the time, but we are asking people to be very cautious.

I underline Annabelle Ewing's point that those five days—23 December to 27 December inclusive—are absolutely the limits and should be treated as such. If people can do things in less time, they should do so, and if they are able not to do things at all, they should not do things at all.

Annabelle Ewing: I thank both gentlemen for the clarification. I have a follow-up question on that issue, and then I will turn to another area.

I understand that, for those who feel that, because of their personal circumstances, they

have to take up the slight relaxation, there will be advice to do what they can before they travel or join a bubble to try to keep themselves apart from others to minimise the risk of cross-contamination. I ask Professor Leitch and the cabinet secretary to comment on that. What should people who, in the circumstances, think that they really need to take up the relaxation do to put themselves in the best place in advance of the trip at Christmas?

Professor Leitch: Again, we outline that in the guidance, but the basic instruction, or guidance and advice, will be that people should turn down social interaction in order to make themselves as safe as they can prior to joining the Christmas bubble. That is exactly the same as the advice that we gave to students earlier this year and the advice that will be given to students at the end of the current term and the start of the next one. It is likely to be safer for people's families if they turn down the number of social, work or study interactions between now and forming their bubble. That is fairly common sense. If I were doing it with my family, that is what I would do.

That does not quite mean self-isolation, but people could try—as they should be doing anyway, of course—to limit interaction with others prior to joining that bubble, and they should get everybody else in the bubble to do the same.

Michael Russell: The guidance is clear on that. It says:

“You should limit your social contact with others as far as you can before and after forming a bubble to minimise transmission risks and to protect your loved ones.”

Annabelle Ewing: Obviously, I have not yet had a chance to read the guidance in detail, but I will do so, so that I can help to answer the questions that will start flowing in from constituents.

I turn to a different issue, although it has been referred to. It is about the approach of the large supermarkets to face coverings. Increasingly, I am getting traffic from constituents who are angry, frustrated and worried about the varying degrees of non-compliance in that regard in all the large supermarkets. The cabinet secretary said in answer to an earlier question on that subject that supermarkets are subject to strict regulation, that complaints should be made at the appropriate level and that action should be taken.

Therefore, I am asking what action the Scottish Government will take. I presume that it can write to the chief executives of all the large supermarkets to remind them of the legal requirements on their organisations. Individual constituents might be afraid to make a complaint, they might not know how to go about it and they might feel that it does not carry much weight.

The issue does not relate exclusively to the large supermarkets. It is raised with me in relation to small shops. I have constituents who have taken up the issue with the enforcement team in Fife Council, but who do not think that anything has been done. Perhaps the cabinet secretary could say what he expects local authority enforcement teams to do and whether he has checked recently that they are doing what they have been tasked with doing, because an increasing number of my constituents do not feel that that is the case.

Michael Russell: Those are good questions. I can assure Annabelle Ewing that my colleagues in Government will and, indeed, do remind large supermarkets and others of the requirements on them, but I note what she has said about the need for a further reminder. I will ensure that the Cabinet Secretary for Rural Economy and Tourism, who has responsibility for dealing with supermarkets, deals with the matter. He is known to the member. I will make the point to him—as I am sure that she will do—that supermarkets need to be reminded.

I know Annabelle Ewing well, and I am sure that, when constituents come to her, she makes representations to the store at local level and that, if it is unable to do something, she will make the wider point to the store at a more senior level and to the management of the company that any breach of the regulations is unacceptable.

Councils must take the matter seriously, and I know that they do, but there is pressure on them. Environmental health officers, who will be particularly concerned about the issue that Annabelle Ewing raises, are also on the front line in dealing with issues around Brexit—I am sorry to mention the dreaded word. There are not enough environmental health officers to cover all such matters. They are also the people who try to ensure that there is compliance in places such as meat packing plants and that outbreaks are contained. There is a lot of pressure on all those people, and on all of us, to make sure that that work is done.

Councils want to ensure that observation takes place, but people themselves must recognise that observation should take place. Each of us should say, when we need to do so, “This isn’t right. We need to get this sorted. What’s gone wrong here?” We all have that obligation, because we are all in this together.

Annabelle Ewing: I thank the cabinet secretary for that answer. I guess that, on the supermarket issue, an appropriate channel of communication would be cabinet secretary to cabinet secretary.

On the important issue of local government enforcement—the cabinet secretary knows that

this is the case, because I am also a member of the Culture, Tourism, Europe and External Affairs Committee—I absolutely appreciate that the Brexit shambles is impacting negatively on every area of our lives, and that there has been an abject failure on the part of the UK Government to provide any meaningful preparation guidance for economic activity in our country.

Equally, however, an individual constituent who goes into a local shop or a bigger shop might feel a bit tentative about raising there and then the issue of the rule on face coverings not being enforced. I understand that we need to get feedback—as an MSP, I have bigger shoulders and I am happy to get that feedback—but it would perhaps be quite brave for some individuals to make that point directly in a shop. They might be fearful of doing that. I am sure that the cabinet secretary understands that point very well.

Michael Russell: I do, and I and my office have taken up such issues with supermarkets in my constituency, recognising that the individuals concerned have not wanted to. We are able to do so, and that is one of the roles that we have—as do councillors.

Shona Robison (Dundee City East) (SNP): Good morning, everyone. It will not surprise you that one of my questions is about the local situation in Dundee. I was pleased to see that there has been a 24 per cent drop in the rate of cases per 100,000. As we head towards the next review period, does that bode well for a move to level 2 if that continues? Is the message to Dundonians to keep doing what they are doing? If that trend continues, could that bode well for a move to level 2?

Professor Leitch: I can exclusively reveal this, as I think that I have two more days of data than you have. The rate has stayed stable in those two days, at 106 and 104 per 100,000. The level has gone down by 29 per cent over a seven-day period from a high in this 10-day period of 145. The rate in Dundee is now below the Scottish average, and that is very significant. We warn against looking at just one piece of data, because our decisions are made in the round but, roughly speaking, local authorities that are above the Scottish average are in level 4, and local authorities that are below the Scottish average are in lower levels. It is not quite as simple as that, but it is kind of how things have worked out.

Dundee City now finds itself below the Scottish average of cases per 100,000, but a figure over 100 is still high. The WHO target for control of the pandemic is 50, and we have very few local authority areas at 50, which is why we have nationwide restrictions. Dundee City was therefore put into level 3, and it has done well to get to where it is. The figures for the past four days have

been stable. That is what we are seeing in level 3: stubborn stability. To turn the corner is really hard, and that is why a lot of areas have had to go into level 4 in order to get the rate down, as they have stuck at around 140 or 150. Dundee started from a better place.

Your advice is absolutely correct. People should be very careful about social interaction, and they should be careful in the hospitality and the shops that they are allowed to go into, so that they get that rate down. I will be the first to recommend level 2 if it is the right time to do so.

Shona Robison: It is helpful to get that clear message—thank you.

I turn to the guidance, which I have been trying to plough through during the meeting. I will first pick up on the issue of people who were asked to shield previously, who are potentially the most vulnerable people. I will not read out all the guidance but, in summary, it says:

“you should take time to think about what being a bubble means for you. Being part of a bubble would involve greater risks for you as you would be increasing the number of people you have contact with.”

It says that people should “not feel pressured”, and that they have to make a judgment about whether coming together is a risk too far.

That section of advice ends by saying that a link to further guidance on that will follow. Will that further guidance that is to follow give people more information to enable them to make that judgment? It is obviously a very difficult judgment for people to make based on their own circumstances. What are we likely to see in that further guidance? What kind of things will it cover?

Professor Leitch: That was a big concern for us, as you can imagine. Fundamentally, we have offered people in that higher-risk group the same advice as the rest of the population, but we have told them to be more careful. That is not the most individualised advice, but we would ask them to talk to their care team if they are particularly worried, and they should certainly talk to their family. Ironically, people in that category are often the most socially isolated group. Therefore, the Christmas relaxation may be the very thing to do for them, but perhaps with one other family rather than two other families. Perhaps they could join their extended family for Christmas dinner but not have other people in that family.

People should think about the nature of the family that they are joining. To take my example, if I had my normal Christmas dinner, I would have two people in the room who are out at work every day and I would have four people who are not at work every day. The risk for those who work is slightly higher, no matter what they do for a

living—whether they are travelling or in a workplace.

Therefore, we should think about who is meeting up and the nature of the risk of and for each person in the family. We have talked about restricting social interaction before Christmas: can the family members who someone plans to have Christmas dinner with or to spend Christmas eve with restrict their social interactions? Is that possible, or are they people who have to go to work, such as MSPs or essential front-line health workers, whose risk, of course, is slightly higher? In broad terms, the further guidance will be about taking care in that high-risk group. If anyone is worried, beyond the conversations that they are having with their own families, they should talk to their individual care team.

10:15

Shona Robison: Is that further guidance imminent? Will it be published in the next few days?

Professor Leitch: Yes. It is being considered at two levels. There is a UK clinical committee, on which my deputy sits, on that high-risk group, risk assessments and all the things that we do for that group, and then there will be Scottish advice about what we think the guidance should be. We will also produce some extra guidance on care home visiting and hospital visiting, which are subsets of the major Christmas relaxation.

Shona Robison: We have talked a lot this morning about the balance of risks and how difficult that is. In looking through the guidance, I was struck by the fact that children under 12 do not need to maintain social distance from others. I get that, because getting small children in particular to maintain social distance from others is an almost impossible task. However, it is a blanket rule for children under 12. As we can imagine, children are out and about and, if someone has vulnerable grandparents, say, taking part in festive activities and there is no social distancing, is that too much of a risk? We understand the difficulties of children social distancing and the desire to have hugs at Christmas time, but should we be saying that to people? Again, that feels slightly risky, given that children will be mixing at school right up until the Christmas break.

Professor Leitch: I am glad that you are cautious, Ms Robison. I like caution in the circumstances. That piece of guidance is not a change to the existing rules. That is the rule at present: children under 12 do not need to maintain physical distance from others. However, we do not suggest that people should throw caution to the wind. We think that people should still be very careful about hand washing for children, the

surfaces that children touch and all those elements. The risk of infection in under-12s is lower than that in the rest of the population, and their ability to transmit the disease is lower than that in the rest of the population. Therefore, the clinical advice is, frankly, that that is a risk that it is okay to take but that it is not risk free. There is no risk-free route here. People should think carefully about the nature of their bubble and about the number of under-12s in that bubble, and they should make a risk-based judgment in their own family.

Shona Robison: Therefore, these are guidelines and, if a member of someone's family might be at particular risk but they still want to be part of a family gathering—which they might not have been doing up until now—in judging the overall risk, even where the children are under 12, people should take into account whether it will be the first time that that person has mixed socially. People should think quite carefully about all the risks. Is that what you are saying?

Professor Leitch: That is absolutely correct. It is so difficult, because the only thing that we could have done that was definitive was to keep all the restrictions in place. That was the only real alternative and, from a public health perspective—and the decision makers agreed—that was too harsh. Therefore, we have had to allow the population to make some choices. The population has done very well up to this point and I trust them to be able to do it as safely as possible. However, your advice to your constituents and our national advice will be to do it very cautiously, depending on the individual circumstances. People who have a high-risk individual inside their bubble should be more cautious than those who do not.

Shona Robison: Finally—this issue is maybe also for Jason Leitch—there is a perception that there is a clamour to get rid of the restrictions and for everybody to get together. There is an element of that in my mailbag, but I have been quite surprised by how many constituents who feel the other way have got in touch with me. They have been very concerned about the level of risk and what the impact might be on the numbers following Christmas. I wanted to put that on the record. It probably will not be a surprise, but it is important. I was a little surprised by the weight of the balance. There is a lot of caution out there. Maybe that is a good thing in the light of the messaging that has been given this morning.

Professor Leitch: I think that it is. Our polling data suggests that there is an even split, which probably means that we have got it about right. Some want more freedom, some want less freedom and some will ignore whatever we do. We should provide guidance as best we can. Those in

the population should then choose carefully what they do according to their circumstances.

Monica Lennon (Central Scotland) (Lab): Good morning, everyone. Colleagues have, helpfully, already asked questions for information about sections 16 and 17 of the Coronavirus Act 2020 and the statutory instrument that is in front of us. The responses from the cabinet secretary and his officials have been helpful, but I want to get clarification on a subject that the cabinet secretary has noted my interest in. Perhaps David Fotheringham and Rod Finan might be best placed to help. It has been explained that there are concerns about increased demand on children's services over the winter period. What is the scale of that demand expected to be? Will it be uniform across Scotland?

Michael Russell: I think that Rod Finan might be best placed to answer that at this stage.

Rod Finan: We monitor the demand for children's services on a weekly basis. There was, for example, a spike in child protection registrations as we came out of lockdown, but that has stabilised since.

The short answer to Ms Lennon's question is that, at this point, we cannot absolutely quantify what we think the demand will be but, when we speak to chief social work officers, they are concerned—as everyone is—that there will be a spike in demand with the winter situation. That is why we have asked for the emergency powers to be retained for children's services.

As I said previously, it is all about getting services to the families that need them most as quickly as possible. I cannot say what I think the demand will be, but I can say that chief social work officers are feeding back to us that they are concerned that there will be demand, just as there will be demand for other services during the winter. We are absolutely aware of that. I cannot give definitive answers, other than on what we have been monitoring so far. There was a spike coming out of lockdown, and there has been a stabilisation since then.

I hope that that helps.

Michael Russell: Thank you. That is helpful.

Monica Lennon: It is reassuring to hear that those issues are looked at on a weekly basis. I am sure that there is constant dialogue and discussion.

I think that it was said that only four local authorities have taken advantage of the powers relating to adult social care and children's services. Section 16 of the Coronavirus Act 2020 also covers young carer statements. Maybe this is because of how my brain works, but I feel conflicted, as we know that children's and disabled

people's organisations are saying that they really want the assessments to be done, because that is in the best interests of service users, but that has to be reconciled with the capacity in the workforce in our local authorities. Is there a reason why the power for local authorities not to have to do young carer statements is still in place? It seems to me that we need those statements more than ever. Further explanation of that would be helpful.

Michael Russell: To be clear, the power still exists to have those statements—it was not abolished. There is another power in the act to do something else, which we regarded as necessary at that stage. Does David Fotheringham want to say a word or two about this?

David Fotheringham: I think that Rod Finan would be best on young carer statements.

Rod Finan: Young carer statements are a priority for every local authority to which I have spoken. The cabinet secretary is right to say that these are powers that can be used. Only four local authorities have used the emergency powers, so full assessments for young carer statements are being used in the other 28 local authorities.

I would emphasise that, even if a partial assessment is done to look at support for young carers, the statutory guidance focuses on the important things that are required in that assessment and the supports that need to be provided to a young carer or indeed any other child or family. Support for young carers is still a priority and is still being assessed and provided for. I am very conscious of that, both from my local authority experience and indeed from the contacts that I have now in the chief social work adviser's office.

Monica Lennon: Thank you. I think that that will be very reassuring for many people to hear. The cabinet secretary said that we are coming up to a reporting period, so we will look at that further information, as well as trying to get a sense of the backlog.

I want to go back to the Covid-19 statement. I was struck by the evidence given to the committee last week by Dr Liz Cameron from Scottish Chambers of Commerce. She raised the issue of the short notice periods for businesses. I think that we all understand some of the practical issues that arise. My colleague Richard Leonard has raised the impact on businesses, and the financial losses for those who have had to take staff off furlough and increase stock, only to be told that they could not open. Has an assessment been done of the financial impact of the timing of decisions and the notice period that is given to businesses if they are in an area that is changing levels?

Michael Russell: We publish a business regulatory impact assessment for every set of

regulations. It is an old argument, which we have been through many times in the committee. As a general point of principle, we like to give people as much notice as possible. Equally, though, we have to be able to take action when that action is required and not delay that action. It is a balance between the two. I notice that, south of the border, the Conservatives argued that there should be a week between any discussion and implementation, and then they immediately broke that. There is no hard and fast rule. We will give as much notice as we can.

The rhythm that we are getting into, I hope—this meeting is part of that rhythm—is of making sure that an understandable process is being gone through, that people know what that process is and that we give as much notice as possible. As Jason Leitch knows, a feature of Cabinet discussions is the question of how much notice can be given. When certain things are under consideration, how much preparation time can be given to people? That is always an element of discussion, but so is the fact that, the moment you start to do that, people start to speculate, and that speculation is not helpful. I hear what Monica Lennon is saying. We are committed to giving as much notice as we can, but it is very imperfect at the moment, given the nature of where we are.

The Convener: David Fotheringham wants to come back in briefly on the social care SSI.

10:30

David Fotheringham: It is a point of clarification, convener. The powers have been used as a whole by only four local authorities, and they have been used to a lesser extent in relation to children's services. Some of the authorities that were using them for adult services are not using them for children's services. Rod Finan is correct to say that the majority of authorities are doing assessments as normal.

Michael Russell: It might be helpful to the committee, and to Monica Lennon, for David Fotheringham to amplify that point by giving details of those authorities and what the powers have been used for. That gets the matter out of the way, and we will know definitively what the situation is. We are coming up to the end of a reporting period, so we can either provide that information separately or put it in the report.

The Convener: Thank you for that. I know that your timetable is tight, but there are two supplementary questions. Do you have time to deal with them now?

Michael Russell: Yes, of course.

The Convener: The first is from Beatrice Wishart.

Beatrice Wishart: Thank you, cabinet secretary, for considering the matter of the overnight ferry to Aberdeen on 27 December. It raises another issue with onward travel. Could I have an opportunity to discuss that with your officials later today?

Michael Russell: Of course. The implication is that, if people are coming back on the overnight ferry, they would have to conclude their journey thereafter, so that would be legitimate. I hope that that is a good example of how we are listening to the committee and how the new process is operating, but I stress that we must not have 23 and 27 December as porous days, and any exceptions will be tight. We will try to provide you with more information if we can—if you email me, we will get somebody to talk to you.

Beatrice Wishart: Thank you—that is appreciated.

The Convener: The last question is from me, on general travel restrictions rather than the Christmas issues. How long will the travel restrictions last? There is no end date for them in the regulations. Can you provide some clarification on that?

Michael Russell: The travel restrictions are intended to be part of the regulations for levels 3 and 4, so I would imagine—although I would want to make sure of this—that they would last for areas in levels 3 and 4 while the areas are in those levels.

I do not think that we are likely to risk changing that at this stage. It could be that, as and when the situation improves, we relax those restrictions as part of the general process, but at present people should take it that, if they are in levels 3 and 4, they should remain within their local authority area, and if they are in lower-level areas, they should not travel into higher-level areas. That applies now and for the foreseeable future.

The Convener: Item 3 is consideration of the motion on the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 2) Regulations 2020, on which the committee has just taken evidence. The SSI gives effect to the changes in restrictions that were announced at the weekly review on Tuesday 10 November.

Cabinet secretary, would you like to make any remarks on the SSI before we come to the motion?

Michael Russell: I have been happy to answer questions, so that is okay.

The Convener: I invite the cabinet secretary to move motion S5M-23355.

Motion moved,

That the COVID-19 Committee recommends that the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 2) Regulations 2020 (SSI 2020/374) be approved.—
[*Michael Russell.*]

The Convener: No member has indicated that they wish to speak, so I will put the question on the motion.

Motion agreed to.

The Convener: That concludes our consideration of the motion at item 3 and our time with the cabinet secretary this morning. I thank the cabinet secretary and all his officials for their evidence. That concludes the public part of the meeting.

10:35

Meeting continued in private until 11:18.

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