



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Health and Sport Committee

**Tuesday 23 March 2021**

**Session 5**



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**HEALTH AND SPORT COMMITTEE**

**11<sup>th</sup> Meeting 2021, Session 5**

**CONVENER**

\*Lewis Macdonald (North East Scotland) (Lab)

**DEPUTY CONVENER**

\*Emma Harper (South Scotland) (SNP)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)

Donald Cameron (Highlands and Islands) (Con)

\*Alex Cole-Hamilton (Edinburgh Western) (LD)

\*David Stewart (Highlands and Islands) (Lab)

\*David Torrance (Kirkcaldy) (SNP)

\*Sandra White (Glasgow Kelvin) (SNP)

\*Brian Whittle (South Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Mairi Gougeon (Minister for Public Health and Sport)

Laura McGlynn (Scottish Government)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Health and Sport Committee

*Tuesday 23 March 2021*

*[The Convener opened the meeting at 10:00]*

### European Union (Withdrawal) Act 2018

#### Health Security (EU Exit) Regulations 2021

**The Convener (Lewis Macdonald):** Good morning, and welcome to the 11th meeting of the Health and Sport Committee in 2021. We have received apologies from Donald Cameron. Emma Harper will join the meeting later.

All members and witnesses should ensure that mobile phones and all notifications are switched to silent mode during the meeting.

The first agenda item is an evidence session with the Minister for Public Health and Sport on the Health Security (EU Exit) Regulations 2021. I welcome Mairi Gougeon. She is accompanied from the Scottish Government health protection unit by Laura McGlynn, who is the interim head of health protection and screening, and Erin McCreadie, who is the team leader for environmental health and infectious disease, and by Ruth Foulis, who is a lawyer in the Scottish Government legal directorate.

I invite the minister to make a brief opening statement.

**The Minister for Public Health and Sport (Mairi Gougeon):** I am pleased to be here today to answer the committee's questions on the Health Security (EU Exit) Regulations 2021, to which Scottish ministers have been asked to give consent.

I again offer the Government's apologies for the speed with which the committee has had to consider the regulations. Although we provided you with them as soon as we were able to do so, I appreciate that the situation is not ideal, so I am grateful for your having found time to consider them. I hope that your efforts today will strengthen the health protection regime that we are trying to create.

As members are aware, health security is a devolved matter. However, when the United Kingdom was a member of the European Union, EU law by default created a strong system of co-operation and co-ordination between the four nations of the UK. For example, cross-border

threats to health had to be notified to Public Health England, which in turn notified the EU.

That situation has changed, but the need for such close co-operation between the four nations has not. The UK must still also meet global obligations, which now fall under the EU-UK trade and co-operation agreement and international health regulations.

That makes the regulations important for two reasons. First, they will ensure that there is a legislative underpinning across the UK for a co-ordinated approach to identifying and tackling threats to health security. That means that processes are in place to share information on threats and to work together on solutions.

Secondly, the regulations will ensure that the UK as a whole will be able to meet its international obligations. Failure to approve the regulations could be interpreted as the UK not complying with its obligations under the trade and co-operation agreement, which could have significant consequences both for the UK's access to important EU health institutions, and for the more general implementation of the trade and co-operation agreement.

I am therefore invested in ensuring that the committee and the Scottish ministers are reassured that the regulations are robust and fit for purpose.

Although I cannot tell you that the agreement will allow us to fully replicate the benefits that we derived from EU membership, it has already secured us access to key institutions for Covid purposes. It is vital that we maintain that ability in case of future threats. The past year has taught us that protecting the health of our populations cannot be done by any Government alone but requires co-operation across borders and willingness to share with and learn from one another.

There has already been close co-operation between the health agencies and Governments of all four devolved nations. In recent months, officials have met every fortnight as part of the four-nations health protection EU transition group. Those meetings have helped to develop the regulations and the common framework on public health protection and health security, of which, I believe, the committee saw a summary late last year.

Work has now moved on to planning for practical operation so that we can continue to support and protect each other against health threats. The regulations are an important foundation for that work, so I hope that the committee will agree and approve the proposal to consent to their being laid in the UK Parliament. I look forward to answering members' questions

**The Convener:** You touched on the relationship between the regulations and the public health protection and health security common framework. You will be aware that the committee has taken a close interest in the common frameworks that have come before us. It is regrettable that we have not had the opportunity to consider the health protection and health security framework before seeing the regulations, although you explained the reasons for that. When will the Scottish Parliament have the opportunity to scrutinise that framework?

**Mairi Gougeon:** When we set out the technical summary of the framework outline agreement in December last year, we expected the framework to be available for scrutiny early this year. However, the Cabinet Secretary for the Constitution, Europe and External Affairs wrote to the convener of the Finance and Constitution Committee to outline that a change to the timeline for the remaining provisional frameworks meant that it was expected that they would not be ready for scrutiny by Scottish Parliament committees before the autumn. As the cabinet secretary said in his letter, that did not relate to a particular issue with one framework; the whole framework programme has been affected by a wider approval issue that involves the joint ministerial committees.

I am pleased to say that portfolio minister and joint ministerial council ministerial approval for the health protection and health security framework has recently been given, so I hope that Parliament will be able to scrutinise it as soon as possible after the Scottish Parliament elections.

**The Convener:** That is welcome. I have no doubt that our successor committee will pursue the same approach as we have pursued in relation to the framework. After initial consideration of the framework, will there be opportunities for on-going scrutiny and amendment of the framework's operation by Scottish Parliament committees?

**Mairi Gougeon:** Absolutely. That will be the case in much the same way as has been possible for frameworks that the committee has looked at previously and which I have appeared before the committee to discuss. I expect Parliament's scrutiny role to be fulfilled by the Health and Sport Committee's successor at the start of the next session. The framework will operate provisionally before such scrutiny, but it will not be finalised until recommendations that follow scrutiny have been taken into account.

**The Convener:** That is helpful.

**David Torrance (Kirkcaldy) (SNP):** Given the divergence among the four UK nations on management of the Covid-19 pandemic, how confident are you that the framework agreement and its related concordat will ensure full and equal

co-operation in the event of any future health threats—pandemic or otherwise?

**Mairi Gougeon:** The aim of the framework and the regulations is to ensure co-operation and co-ordination among the Governments and health agencies in the UK. In some matters, that will mean a common approach being taken to surveillance and monitoring of health threats. We hope that the arrangements will enable us to share best practice and learning.

The framework recognises that much of health protection and security is devolved and it allows for divergence in approaches. For example, nothing would stop us carrying out higher levels of surveillance if we thought that it was necessary for particular issues; we could still do that through the framework and the regulations.

We expect the framework to help us to manage divergence in a co-ordinated and coherent way. It builds on current practice in how we work together at the moment.

**David Torrance:** Have discussions about the common framework with the other devolved Administrations and the UK Government covered learning from the pandemic? Have they included consideration of an urgent review of public health and civil contingency legislation across the UK and in Scotland?

**Mairi Gougeon:** Over the past couple of years, our discussions have been wide ranging. The impacts of Covid-19 have informed them, but it is fair to say that that is likely to play a greater role in the operational aspects of the framework and how it is implemented. The exact form that that will take is still to be determined, but workstreams could be dedicated to the on-going Covid-19 response and to learning lessons from that.

Civil contingencies legislation is well established in Scotland and right across the UK, and our contingency planning has helped us to deal with the impact and consequences of the pandemic. However, we will, of course, seek to learn lessons from dealing with Covid-19 and to see how we can further improve our national preparedness in Scotland, while working alongside the other UK Administrations.

**Sandra White (Glasgow Kelvin) (SNP):** You mentioned in your opening statement that health security is a devolved matter; you referred to it in answer to the convener's questions. You mentioned that the framework is not yet available, but will be. In answer to David Torrance, you said that the exact form of public health and civil contingencies legislation across the UK is still to be determined.

I want to follow up those questions with a simple question. Are you confident that the Scottish

ministers will retain full responsibility for public health measures in Scotland?

**Mairi Gougeon:** Yes, I am. I reassure members that, as I said, the framework builds on the strong co-ordination that we have with the other Administrations and public health agencies. It is in our best interests to co-ordinate closely with one another; the framework and the regulations build on that. The arrangements that we are considering will not change the scope of devolved powers; rather, they have been established to ensure that we maintain close co-operation and co-ordination. The framework specifically allows for divergence among the four nations.

I repeat that Scottish ministers will remain responsible for public health. The real benefit of the arrangements is that they ensure that the four nations work together as equals to ensure a high level of health protection right across the UK.

**Sandra White:** Obviously, the statutory instrument comes in the midst of the Covid-19 pandemic. Have there been full discussions on how non-infectious health threats, such as antimicrobial resistance, will be managed and considered?

**Mairi Gougeon:** Work on the framework started two years ago prior to the pandemic, so it has been designed as a vehicle to tackle a wide range of threats. In essence, it takes an all-hazards approach to health protection and health security. That means that it is designed to tackle a broad range of threats that could arise—infectious disease, non-infectious disease and other threats that cross borders, including threats relating to radiation, chemicals and environmental hazards, and antimicrobial resistance. Schedule 2 to the regulations makes explicit provision for those.

**David Stewart (Highlands and Islands) (Lab):** My questions are on the European Centre for Disease Prevention and Control. The minister will be well aware of the important job that that organisation has done since it was set up by the EU in 2004. I have taken a particular interest in the centre, over the years. As the minister knows, it exists to improve public health and to provide a source of independent scientific advice, which has—of course—been badly needed during the pandemic. Will there be a major gap in Scotland and the UK as a whole in health protection measures now that the ECDC will have no role within the UK?

**Mairi Gougeon:** Ideally, we would not have had to develop frameworks and consider the issues. For the Scottish Government, the ideal situation would have been that we had maintained access to such institutions as an EU member state.

10:15

However, in terms of the arrangements that we are looking at right now, rather than trying to replicate the benefits of membership of the ECDC, the process is designed to be part of the means that will allow us still to access that institution, which is vital. It is designed to bring strategic co-ordination to the framework and is a means of ensuring that we also meet our obligations under the trade and co-operation agreement that requires the ECDC. It is on that basis that we are able to progress work on developing a memorandum of understanding with the ECDC that we hope will give us, as a third country, on-going access to it. It is too early for us to say yet with confidence exactly what that MOU will look like, but the work to develop it has begun.

**David Stewart:** Yesterday, in preparing for today's meeting, I had a careful look at ECDC budgets and at its staffing, which I will perhaps come to in a second. As you will be aware, the budgets are substantial and the ECDC has built up considerable expertise since it was set up in 2004. Will any ECDC functions not be covered by the new arrangements in Scotland? I am particularly interested in whether surveillance, epidemic intelligence and emerging vector-borne diseases will be covered.

I have another question on specifics, on which I appreciate that the minister might want to write back to the committee—this is my last ever question, so I am being extremely fair this morning. Will the Scottish Government identify new budgets and staff, given that the areas that I cited are major areas of work? Can the minister give us some hints on that? For what this is worth, my experience in politics tells me that, without budgets or staff, you can only talk a good game. I am not suggesting that the minister is doing that; I am merely saying that that is where the substance is in any policy analysis. I am therefore keen for the minister to elaborate on that.

**Mairi Gougeon:** I will try to answer as fully as I can, but if there is further information that you want on the back of that, I would be happy to provide it to the committee in writing.

The committees that will be established will not be able to replicate the full intelligence-gathering capability of the ECDC, because the ECDC draws on all member states for its information and intelligence. However, the explicit intention of the framework is to maintain the system of co-operation across the United Kingdom, which, as I mentioned in my opening statement, EU law created almost by default. By doing that, we will be able to ensure that the UK has a strong system of intelligence and data sharing and that the UK can meet its obligations under the trade and co-operation agreement with the EU as well as its

obligations under the international health regulations. Meeting those obligations is vital, because they are the means by which we will still be able to gain access, albeit on a case-by-case basis, to the EU early warning and response system. It is also a key tool in the development of the memorandum of understanding with the ECDC.

As I said in my previous response, the Scottish Government's view is that we would rather not be in this situation and would have preferred to continue as full members of the EU, which is the best way to secure full access. We have to do everything that we can to maintain that access by other means. The framework and, in particular, the regulations that are before the committee are the best means for us to do that at this stage.

**David Stewart:** I am sorry, convener, but may I press the minister on the final question?

**The Convener:** Yes.

**David Stewart:** Have new budgets or staff been identified to cover the huge areas of responsibility that the ECDC covers?

**Mairi Gougeon:** The regulations will set up a number of groups, such as the UK health protection committee and the UK health protection oversight group. There will be equal representation across each of the bodies, and the Scottish Government will be represented by staff on those groups. Again, it is about co-ordination and building on the work that we are doing already. My officials may have further information on whether we expect any additional resource to be required.

**The Convener:** I invite Laura McGlynn to indicate whether she can add anything.

**Laura McGlynn (Scottish Government):** The discussion about budgets has not been had yet because the work has been about drawing up the framework and drafting the regulations. As the minister said, there will be an oversight committee and an oversight group, and the framework will be reviewed regularly to make sure that it is operating as we want it to and has the resources that it needs. However, as the minister said, the aim of the framework is to build on and recreate what was already there, rather than to replicate the ECDC's functions.

**Brian Whittle (South Scotland) (Con):** I want to look at the power to amend the list of communicable diseases and special health-related issues. The existing list is to be replicated in the regulations. The secretary of state has been given the power to amend the list but, before making those amendments, they will require to obtain the consent of the devolved Administrations. The secretary of state will also be required to have

regard to requests by the devolved authorities to make such amendments.

What criteria will apply to decisions to amend the list of communicable diseases and special health-related issues?

**Mairi Gougeon:** The regulations do not make provision for that, but they do provide the routes by which the list can be amended. I expect the UK health protection committee to determine the criteria for that. I hope that, by the time that this committee is able to scrutinise the framework, there will be some more clarity and detail about such operational issues. We do not have that information at the moment.

**Brian Whittle:** Can you clarify that? I want to be sure that, if decisions are to be made about changes to the list, the intention is that all the devolved nations will be involved in the decision-making process.

**Mairi Gougeon:** As I said, the UK health protection committee will determine the criteria. The committee is made up of representatives from all the devolved nations as well as their health agencies, and there will be equal representation on it.

There will be more detail and clarity in this area, and I hope that that will be in place by the time that this committee scrutinises the framework.

**Brian Whittle:** Finally, you suggest that the criteria have yet to be decided. I assume that we will want to replicate the existing EU law criteria, given that the EU law will be revoked. Are we looking to replicate those criteria?

**Mairi Gougeon:** Again, it is up to the UK health protection committee to determine the criteria, but it is reasonable to assume that the EU criteria will be taken into account when that committee is considering what criteria should apply.

**The Convener:** I call Alex Cole-Hamilton.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I have no questions, convener. The questions that I was going to ask have been covered.

**George Adam (Paisley) (SNP):** Well, that was a disappointing return from Mr Cole-Hamilton after his three-year absence.

If the Scottish ministers or the Scottish public health agency wished to undertake additional surveillance for health protection purposes, how would that be achieved?

**Mairi Gougeon:** The Scottish ministers will be represented on the UK health protection committee, so we will have a role in developing any recommendations that the committee makes. The regulations also provide that, if Scottish



ministers were to unilaterally request that an amendment be made, the secretary of state has to have regard to that request, and to consider that request alongside any advice from the committee.

The regulations are designed to create a compatible and comparable level of surveillance across the UK, but my understanding is that, as long as Scotland meets the requirements that are laid out in the regulations, we can conduct any additional surveillance that we consider to be necessary or appropriate.

**George Adam:** Thank you. Can you see a situation where you might wish to make regulations amending the list that would not apply in the rest of the UK? How would you go about doing that?

**Mairi Gougeon:** It is difficult to think of a particular scenario right now where Scotland would want to act differently from the rest of the UK. However, Scotland can maintain its own list of notifiable diseases. The regulations are intended to ensure that there is continued sharing of comparable and compatible information with respect to serious cross-border threats to health, and to enable co-ordination and collaboration. Assuming that all those obligations are met, the four nations can still diverge in their public health responses.

If any unforeseen circumstances arose, there would be an opportunity for Scotland to have in place a process for, say, a notifiable disease that would not necessarily apply across the UK. However, our preference would be for the four nations to work together and complement one another. I hope that the framework will provide the mechanism for us to do that.

**The Convener:** The notification says:

“it is expected that in almost all circumstances the Secretary of State would follow the advice of the UK Health Protection Committee in making such amendments.”

In what circumstances might it be appropriate for the secretary of state not to follow the advice of that committee?

**Mairi Gougeon:** A power to make amendments will lie with the secretary of state, and the wording of the legislation will afford them discretion as to whether to exercise that power. In the discussions that have taken place between the four nations, we have been provided with an assurance that the secretary of state will, in effect, have a duty to act on the recommendations of the committee.

I stress that the intention behind all of this is to have a collaborative and co-operative approach that builds on the collaboration and co-operation that we have already developed. I would expect amendments to the list to be made in that spirit. I note that similar wording and powers exist in other

areas. Discretion is included for what would be very rare circumstances where particular concerns beyond public health might come into play.

As I said in response to the previous question, it is hard for me to think of a particular example where the secretary of state might not follow the committee's advice. The broad intention is that the secretary of state will have a duty to act on the recommendations that are made by the committee.

**Emma Harper (South Scotland) (SNP):** I say good morning to the minister and her officials, and I welcome back my colleague Alex Cole-Hamilton.

The framework summary document states:

“The framework also formalises the existing UK Health Protection Oversight Group and establishes the UK Health Protection Committee. These forums will bring together representatives from the UK Department of Health and Social Care, Devolved Governments, and the UK's national public health organisations”.

How will Scottish interests be reflected and represented in the committee?

**Mairi Gougeon:** The UK health protection committee will consist of one member representing each minister from the four nations and one person representing each UK public health agency. The details as to how the committee will operate—for example, its terms of reference—are still to be developed, but it is expected that the committee will meet twice a year, and it will ultimately be accountable for delivery of the framework. The regulations also give it particular responsibilities, such as responsibility for reviewing and advising on amendments to the list of communicable diseases, where that is necessary.

**Emma Harper:** It does not appear that either the health protection oversight group or the UK health protection committee are statutory bodies. I am looking at Public Health England's organigram, and I cannot see the health protection committee listed. It is a statutory body? If not, how do we make it one? How can we ensure that the accountability and the governance are firm and secure?

10:30

**Mairi Gougeon:** I can reassure you that the health protection committee will be established in law through regulation 4. As was stated previously, much of that detail is still to be considered as we move from the work of creating the framework to fully implementing it. Ultimately, the committee will be accountable to the ministers of the four nations, too. I am confident that the membership of the committee will ensure that the governance structures will represent the interests

of all four Governments and all four public health agencies.

**Emma Harper:** I am basically seeking assurance that the voice of Scotland will be heard and will be strong in the committee arrangement. I want to ensure that we have a say in how public health measures are implemented, especially with regard to new viruses and any new co-operative arrangements that might be required.

**Mairi Gougeon:** I think that that has been an important part of the work on the framework as it has been developing, because it is built on the strong co-operation and collaboration that we have across the UK, and it is about the four nations working together on an equal basis. I understand your concern and the desire to seek reassurance on that point, but I can say that Scotland will play an equal role in the arrangements. Each Government and public health agency will have equal representation on the groups, so Scotland's voice will certainly be heard.

**The Convener:** That concludes our questions. Thank you for attending, minister. We will take a view on the matters later in the meeting.

## Retiring MSPs

10:32

**The Convener:** As this is the last meeting of the Health and Sport Committee in this session of Parliament, I will now offer those members who are not seeking re-election an opportunity to say a few words reflecting on their time on the committee.

**David Stewart:** It will be hard for me to say just a few words, convener, but I am happy to say something in my last contribution.

Like many members, I have served on a number of committees during a couple of parliamentary sessions. However, I can say that I have enjoyed my time on this committee the most. I have always been interested in health, but what was fascinating was the dynamic within the committee. Irrespective of our party-political views, we all got on extremely well together. For example, I remember when Emma Harper, Brian Whittle and I visited Westminster and became full members of the Scottish Affairs Committee for one meeting, which is very unusual in my experience in Parliament. I noted in a slightly tongue-in-cheek way that we and the officials were all staying at the Mad Hatter hotel on Blackfriars Road, but I do not know whether that reflects on the committee at all.

With regard to our annual report, I think that we have worked very hard as a committee. We have had excellent officials, led by David Cullum, and I have personally learned a lot from the witnesses not only in the formal sessions but in the informal sessions, such as when the convener and I went to Inverurie and spent a whole day effectively planning the health service of the future. That was a very unusual experience. It is important to have an open and accessible Parliament, and I am sure that MSPs in the next session of Parliament will consider that issue carefully.

Finally, I want to thank you, convener. You have been an excellent convener and have worked extremely well. I want to thank the other members of the committee, the clerks and the witnesses. I have spent an enjoyable three years in this committee, and I can safely say that it has been the best committee that I have been a member of. I thank everyone for their co-operation and ask everyone to keep in touch. It has been a pleasure to be a member of this committee.

**Sandra White:** As David Stewart has done, I would like to praise everyone on the committee and also David Cullum, the clerks and the Scottish Parliament information centre. The information that they have given us has been fantastic. Aside from its convener and its members, a committee is

only as good as its clerks and the information that it receives.

As David Stewart has said, we all come from different political parties. As is the case for members of any committee, we have not always seen eye to eye. However, this committee has worked very hard to ensure that, at the end of the day, we have had consensus. That has been down to good convenership and the attitude of our members. I joined the committee not at the beginning of the session but in the middle of it. I have found the way in which it has reached out to members of the public—ordinary people—very interesting. That has been the most enjoyable aspect of my time here. The committee has had to get through so many Scottish statutory instruments and so much legislation, which has made it a busy time for us. However, it has worked so well. It has been an absolute pleasure to be on the committee—especially under you, convener.

I wish the clerks and everyone else who will be continuing to work with the committee the best for the next session. I thank them so much for all the help that they have given me and other members. The legacy paper that we have produced has been very honest and up front. It is critical on some points but not on others, and it is a great paper. I hope that the next Health and Sport Committee will pick up on some of our suggestions, which will be important for the health of the nation of Scotland.

**The Convener:** Thank you very much, Sandra and David.

This is also my final meeting of a parliamentary committee, so I would also like to thank my fellow committee members, past and present, for working together to deliver our shared strategy and vision over the past five years. I mention in particular my deputy convener, Emma Harper, and the committee's previous convener, Neil Findlay.

It is also the final meeting for the clerk to the Health and Sport Committee, David Cullum. He has been a senior official of the Scottish Parliament for more than 20 years, having set up and led the non-Executive bills unit, since when he has also been editor of the *Official Report* and, in the previous session, clerk to both the Education and Culture Committee and the Local Government and Regeneration Committee. My personal thanks go to David for his support and for bringing his experience and strategic perspective to the service of the Health and Sport Committee this session. I know that everyone will join me in wishing him a long, active and enjoyable retirement starting very soon indeed.

My thanks also go to the rest of the clerking team. The children who have been either brought into the world or nurtured through lockdown by

members of that team would fill a workplace creche on their own. However, despite those distractions and challenges we have had tremendous support over the past five years. I could not possibly name all the excellent clerks who have worked with us, but I mention in particular Lara Donaldson, who has done a great job in keeping the rest of us on the right track.

We have also had tremendous support from the SPICe researchers; the press office; and the external engagement team, who have been as innovative as we wanted them to be, and more; and all the other departments without which the Parliament could not do its job.

To date, every session of the Parliament has seen new challenges and questions for its committees. I am sure that the next session will be no different. As both David Stewart and Sandra White have said, this committee has worked hard, focused on the bigger picture to influence change and engaged with the wider public. I hope that our work will be of value to our successor committees in the next session.

10:38

*Meeting continued in private until 10:47.*



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