



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Recovery Committee

Thursday 16 September 2021

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 16 September 2021

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
VACCINATION CERTIFICATION.....	2
MINISTERIAL STATEMENT, CORONAVIRUS ACT REPORTS AND SUBORDINATE LEGISLATION	22
Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2021 (SSI 2021/299)	22

COVID-19 RECOVERY COMMITTEE

4th Meeting 2021, Session 6

CONVENER

*Siobhian Brown (Ayr) (SNP)

DEPUTY CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

Jim Fairlie (Perthshire South and Kinross-shire) (SNP)

*John Mason (Glasgow Shettleston) (SNP)

*Alex Rowley (Mid Scotland and Fife) (Lab)

*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Neil Doncaster (Scottish Professional Football League)

Professor Jason Leitch (Scottish Government)

Dr Catriona McMillan (Law Society of Scotland)

Gavin Stevenson (Scottish Licensed Trade Association)

John Swinney (Deputy First Minister and Cabinet Secretary for Covid Recovery)

CLERK TO THE COMMITTEE

Sigrid Robinson

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

COVID-19 Recovery Committee

Thursday 16 September 2021

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Siobhian Brown): Good morning and welcome to the fourth meeting in 2021 of the COVID-19 Recovery Committee. We have received apologies from Jim Fairlie MSP, who is unwell.

Agenda item 1 is to decide whether to take item 5, which is consideration of evidence that we have heard, in private. The committee is also invited to consider its work programme and selection of advisers in private at future meetings. Do members agree to take those matters in private?

Members indicated agreement.

Vaccination Certification

09:15

The Convener: At item 2, we will take evidence from a range of stakeholders on vaccination certification. I welcome to the meeting Neil Doncaster, the chief executive of the Scottish Professional Football League and a member of Scottish football's Covid-19 joint response group; Gavin Stevenson of the Scottish Licensed Trade Association; and Dr Catriona McMillan, the convener of the Law Society of Scotland's health and medical law sub-committee.

On 1 September, the Scottish Government announced its intention to introduce and put in place a vaccination certification system by 1 October. The purpose of today's meeting is to take evidence from stakeholders on the proposed scheme. Some of its details are still to be worked out, so we intend to listen to your views and feed them back to the Scottish ministers directly in our regular evidence sessions with them. Any issues that you raise will also inform our scrutiny of any relevant legislation that is introduced to give effect to the scheme. Your input is very valuable to the committee.

I will ask the first question. What are the key issues for the committee to consider in scrutinising the implementation of the proposed scheme?

Dr Catriona McMillan (Law Society of Scotland): Good morning and thank you for the opportunity to give evidence to the committee today.

In managing the recovery from the pandemic, we must think about the management of the spread of the virus. In light of that, we understand that the Government proposes to introduce regulations for a mandatory vaccination certification scheme on 1 October. I will briefly go over some of the key themes and issues that we have highlighted in our written evidence. We note that the regulations for the proposed scheme are likely to be subject to the made affirmative procedure. That has been necessitated by the pandemic, but any regulations must still be subject to appropriate scrutiny and review.

Some of the areas of law that would be engaged by the proposed scheme are uncertain and developing at the moment. When the nature and scope of the scheme becomes more apparent, so might the extent of the legalities that are engaged by it. A vaccination certification scheme would potentially engage, for example, human rights law in a number of ways. That needs to be kept front and centre. Measures must be necessary and proportionate—that is key to any steps that are

taken in certification and must be kept in mind when it comes to any proposed regular review.

Any certification scheme must also be mindful of equality and discrimination law, and the groups that might be disproportionately affected by such a scheme. Further, due to the sensitive nature of health data that might be processed, it is also important to carefully consider the implications for privacy and data collection law.

Generally, the key to good lawmaking in this area is clarity, consistency and—[Inaudible.]—as it is with lawmaking in every area. As we have noted, there is some scope for uncertainty, and we suggest that it is important that the scheme has clear definitions of key terms such as “nightclub” in order to give certainty to those acquiring certification and the various sectors that are involved.

Gavin Stevenson (Scottish Licensed Trade Association): Good morning. From the Scottish Licensed Trade Association’s perspective, there are a number of potentially very problematic issues with the scheme that have not yet been worked through. Although we are engaging with the Scottish Government and civil servants on those issues, it would be safe to say that the very tight timeline for implementation and the late notice in getting clarity on the scheme are likely to present some fairly material challenges.

There are specific issues that require further scrutiny. We must consider the financial and economic impact of the scheme and the key differences between this scheme and those that have been applied in other countries. That topic certainly raises some challenges.

Another issue relates to the definition of “nightclub” and the scope of the premises that are to be included. The current working definition that is being considered by the Scottish Government might include as many as 2,000 premises across Scotland, not just the 100 or so genuine nightclubs.

Another issue relates to market distortion and unfair competition. No matter where the line is drawn, if we include some hospitality premises and exclude others, it seems inevitable that a significant proportion of customers will move from one type of premises to another.

Another issue relates to discrimination and equity. We can see from the vaccination uptake data that there are significant differences in vaccination rates among different socioeconomic and ethnic groups in society. A potential outcome of the scheme is that business owners could be asked to refuse entry to some groups of people at significantly higher rates than others.

Another issue relates to resources and risks. We are aware that there are severe staffing shortages throughout the hospitality sector and many other sectors, but there is a particularly acute shortage of door stewards. If we are looking to control entry into premises, the resources simply do not exist to significantly expand door stewarding capability and capacity across the sector. We should not forget that, even if we are just talking about the 100 nightclubs, we are potentially talking about a crowd every Friday and Saturday night across those venues that is equivalent to the numbers at Ibrox or Hampden park. It would be virtually impossible to magically increase stewarding capacity with 14 days’ notice.

The final issue relates to communication and goes back to my point about definitions. The expressed communication from the Scottish Government and the First Minister is that the policy will apply to nightclubs but not to wider hospitality. Given that the current definition includes the majority of late-opening pubs and bars—thousands of venues across Scotland, not just 100—there is serious potential for miscommunication to cause large issues in the first few weeks of the policy’s implementation, because the majority of people will not anticipate the need to get their vaccination passport in order to get into a wide variety of premises, not just nightclubs.

I will leave it at that for now. I hope that we can discuss those issues in more detail later.

Neil Doncaster (Scottish Professional Football League): Good morning. It is a privilege to be invited to give evidence to the committee.

Now that the Parliament has voted to introduce vaccination passports, all my focus is on the practical challenges that Scottish football faces in working with those passports. I hope to suggest ways in which the passports can work in a practical, workable and pragmatic way. Gavin Stevenson has already pointed to the very tight timescales that are involved, with implementation in a couple of weeks, so clubs need to plan for what could be dramatic impacts on how fans will enter stadia.

Our view is that, if this measure is to apply to crowds of more than 10,000, that should be the expected rather than the potential number and if, as clearly everyone seems to accept, spot-checking is the way forward, we believe that in phase 1, when clubs are getting to grips with the roll-out, there should be no fixed percentages or numbers that clubs should have to spot-check. Vaccination passport checks should be carried out in a way that ensures that there are no bottlenecks, because any such delays in getting into the stadium will potentially lead to

unhappiness among fans and tempers being raised.

We are keen to work with the Scottish Government to ensure that vaccination passports are introduced in a safe and measured way. It is important that we let clubs work with their local safety advisory groups on the details of how their own spot-checking schemes will work in their own stadium infrastructure. Moreover, with the huge variation in information technology infrastructure across stadia, we believe that the way forward is to have stewards visually check the passports that are presented to them instead of there being an insistence on a particular type of technological check, which, given the timescales, would be untried and untested.

The Convener: Thank you, Mr Doncaster. Your feedback is appreciated.

I invite Murdo Fraser to begin the questioning from members.

Murdo Fraser (Mid Scotland and Fife) (Con): Thank you, convener, and good morning, witnesses.

In his opening remarks, Neil Doncaster said that we are looking at a very short timescale for this; indeed, I think that the first weekend that it will apply will be that of Saturday 2 October, which in effect gives us two weeks. How realistic is it for clubs to bring these measures in, given that, at the moment, we seem to have very little clarity as to what exactly will be required of them?

Neil Doncaster: It is for that very reason that I am suggesting that clubs be allowed to manage this in a proportionate way that works for them and their stadia. You are right to highlight the first weekend of these measures, because we have big games between Aberdeen and Celtic, and Rangers and Hibernian, with very large crowds expected. It is important that, on the first weekend of the implementation of vaccination passport checking, a light-touch approach is adopted to minimise inconvenience and disruption and ensure, as far as possible, a smooth flow of fans into stadia. That is why I am strongly suggesting that clubs be allowed to introduce spot-checking in a way that suits them and their stadia.

Murdo Fraser: Thank you for that response. It occurs to me that whatever system is put in place will require significant additional resource from clubs, for example to provide additional stewarding. That in itself will not be easy, and the requirement to recruit additional stewards at short notice at a time of significant labour market issues might well present a significant challenge. Have there been any discussions about how stewards might be found and trained? Are you aware of any assessment that has been done of the additional cost to clubs, should these measures be required?

09:30

Neil Doncaster: Yes. Those are good questions. As has been pointed out, there is a shortage of security staff and stewards. It is clear that, creating an outer cordon, which we believe is the only realistic way to implement such a spot-checking scheme, will require a great many more stewards. I have had discussions with a number of the clubs that have been involved, and they believe that the costs, purely for stewarding and infrastructure, will be upwards of £5,000 per game. That is before any technology costs and, at the moment, it is difficult to put a figure on those. There are significant costs per game that will affect all clubs where the crowd is likely to be bigger than 10,000, and that will include Scottish Football Association and SPFL games. Those games will require large numbers of additional stewards, and, certainly at the moment, it is not clear how easy it will be to find the stewards. The only certainty is that there will be considerable additional cost. We are in dialogue with Scottish Government officials about the extent to which there might be support with those additional costs.

Murdo Fraser: I have been contacted by individuals living in England and Northern Ireland who have season tickets for Scottish clubs and who hope to travel to Scotland in two weeks' time to attend a football match. However, as things stand, I understand that there is no technology that allows those who have certification from outside Scotland to be permitted to access Scottish events. Do you have any clarity about that issue, or do you have any sense of how that will be resolved?

Neil Doncaster: Again, you are right. It is one of the many unanswered questions. It is not clear how any technology under development will work with clubs' IT infrastructure. That is another reason why, in our view, a visual check is the way forward rather than reliance on untried and untested technology, certainly at the introduction of the scheme on 1 October. A light-touch approach, with stewards conducting a visual check of what is presented to them by fans gives us the best chance for a smooth roll-out and introduction of the scheme on 1 October.

John Mason (Glasgow Shettleton) (SNP): Mr Stevenson, you were laying it on pretty thick that this is going to be impossible to do, but the reality is that loads of other countries have vaccination passports. I think that Greece started its system in July, and France, Switzerland and many others have such a system. They seem to have managed it, so what is the big problem here?

Gavin Stevenson: One of the biggest concerns is that, where other countries have implemented vaccination passports, they appear to have done it with a significantly longer lead-in time, rather than

presenting the final details to the general public and businesses a few days or a week before the system is expected to be implemented. In addition, the examples that we have looked at show that, when it comes to the types of premises that require a vaccination passport for entry, the vaccination passport schemes in those countries are nearly universal. We certainly have not seen examples where there would be significant confusion created about premises types and such limited applicability.

To take the French scheme as an example, you need a vaccination passport to get into a restaurant, to get a cup of coffee in a cafe and to get into museums and cultural heritage sites. In essence, it is universal. If you wish to do anything, you must get one. That leads to vaccination passports being taken up across wider society very quickly, and the message is clear.

The Scottish Government's current proposals mean that people might or might not have to have a pass to get into nearly identical premises on the high street in the hospitality and late-night sectors, but the general public have been told that people will need a pass only to get into a nightclub. About 95 per cent of the public do not go to nightclubs regularly. However, under the current proposals, people would need a pass to get into the majority of pubs and bars and even some cultural spaces. That has simply not been communicated.

Those are the two major differences.

John Mason: I take your point that, in a sense, the wider the system, the simpler it is. I understand that the idea was that the system should be quite narrow so that it affects fewer people. Is it your argument that it would be better to say that people will need certification to get into any premises that serve alcohol and are open after a certain time—say, midnight? That would include not only nightclubs but pubs and restaurants.

Gavin Stevenson: That approach might make things clearer in some regards, but it would make things more confusing in others. A practical consideration is that many premises open at lunch time and remain open until 3 o'clock in the morning. We call them hybrid venues. Such a venue might start with a food offer during the day, turn into a cocktail bar in the early evening and then turn into a proper nightclub later on. If there were 500 people in that premises at the cut-off point at 7 pm, would vaccination passports be checked only after that time? If so, people would simply come in before that time. If premises need to check vaccination passports at all hours, what would be done about the lunch crowd? Those people might expect to just show up and have lunch; they would not think that they were going to a nightclub. That is the challenge.

The policy is not clearly defined or universal, so there are a number of fundamental difficulties relating to management of customer expectations and uptake of vaccination passports among the general public.

John Mason: I still wonder whether you are slightly overstating the case. Lots of the restaurants that I go to throw out all the younger kids at a certain time—9 or 10 o'clock—so such things can be done.

One of Mr Doncaster's arguments was that people at football matches are mainly outdoors, so certification should not be needed. Do you accept that we are now going to have such a system? I presume that most people have to use public transport to get to football stadiums, and there is a fair bit of space inside stadiums where people eat, go to the toilet and so on.

Neil Doncaster: We have to be pragmatic. Parliament has voted to introduce vaccination passports from 1 October, so my focus is on ensuring that whatever has to be put in place by clubs, the Scottish FA and the SPFL is workable, practical, pragmatic and, ultimately, proportionate to the issues at hand. I am focused on ensuring that fans who go to the large games on the first weekend after 1 October are not unduly inconvenienced, that there are no bottlenecks and that clubs are given the space and time to bed in a system.

When we last had an outer cordon at a Scottish football stadium, it was at Hampden park during the Euros. However, there were months of planning to allow the physical infrastructure to be built and stewards to be recruited. There were also test events beforehand to ensure that everything went smoothly. In the current circumstances, one of the clubs that we have spoken to is meeting its local safety advisory group only today, so that group has been unable until now to furnish the club with details of what is required.

In the very short time between now and 1 October, the clubs, the SPFL, Police Scotland and the local safety advisory groups will need to work together to ensure what is put in place is proportionate. A light-touch approach for phase 1 of introduction of the scheme seems to be the right way forward.

John Mason: One football fan suggested to me that, as a season-ticket holder, there could be a one-off check of his vaccination certificate for the whole season, so that he would not need to be checked a second time. Is that approach feasible?

Neil Doncaster: No. In most cases, physical cards—whether season books or tickets—can be passed from fan to fan, so it is hard to see how such an approach would work. Many of the fans who turn up to matches will not have smartphones

and might not even have mobile phones. We need to ensure that the system works for everyone who attends games. Our audience is quite mature, and many of them will not have the technology to enable them to show an app on a smartphone. Therefore, a visual spot check of whatever evidence a fan brings is a proportionate way to introduce the scheme.

John Mason: You suggested a visual check. Would that not make it even easier for somebody simply to copy a QR code? The point was made that you could not check the connection between the passport, or certificate, and the ticket for the game. Is that the case? Could a certificate just be copied and a lot of people use the same one?

Neil Doncaster: That is one of the concerns that exists about the introduction of any scheme. The scheme is clearly designed to encourage take-up of the vaccine among the Scottish population. Our priority is to ensure that whatever is put in place does not lead to bottlenecks outside stadia. We have overwhelmingly brilliant and passionate fans, but with literally tens of thousands of fans walking up to stadia in the minutes before kick-off, it is easy for bottlenecks to be created if we create an outer cordon. We need to ensure that we do not inflame tensions in the minutes before kick-off.

John Mason: I am a passionate fan but, sadly, my club does not get 10,000 fans.

On spot checking, I think that you said that you do not want a fixed percentage. Can you suggest what percentage of fans would be spot-checked if that approach was taken?

Neil Doncaster: No—that should be a matter of discussion between the club and the local safety advisory group. They are the specialists who have a good understanding of the stadium infrastructure. Police Scotland will be part of each local safety advisory group and will, together with the club, be best placed to put in place whatever percentages or numbers are deemed to be appropriate.

My strong view is that, in phase 1 of the scheme, which will be rolled out literally within a couple of weeks, we should have a light-touch approach to enable clubs to let the system bed in, and to create the incentive that the Scottish Government clearly wants to create for more people to take up vaccination, without creating a higher risk of problems at turnstiles.

John Mason: My next question is for Dr McMillan from the Law Society. I was interested in what your submission says about the concept of discrimination. You suggested that there had been a case—I will not even try to pronounce it, but it was in the Czech Republic—in which the courts said that it was not discrimination and that it is

legal to have passports, certificates or something along those lines. That case particularly affected children.

On the other hand, you raise the point that introduction of a certificate could be discrimination under the Equality Act 2010 because certain groups have not been vaccinated. Will you tell us where you are with that? Is the law changing? Are we uncertain?

Dr McMillan: As I highlighted, the law on that area is definitely evolving. It has done so this year in particular, with that case from the Czech Republic.

Unfortunately, there is not a categorical answer but, as we mention in our report, it is uncertain whether things such as anti-vaccine beliefs would be considered as protected characteristics under the 2010 act. We note that, in other contexts, beliefs such as vegetarianism have not been considered as being protected in employment, for example, but others, such as ethical veganism, have been considered as being protected.

09:45

Of course, we now know from the Czech Republic case that a critical stance on vaccination does not amount to a breach of rights under article 9 of the European convention on human rights, which is freedom of thought, belief and religion. We raise that because, although the extent to which the regulations will engage with equalities law is not clear, it is of note that certain groups, who have lower vaccine uptake, are protected by the Equality Act 2010 and, thus, might be disproportionately affected by the regulations.

John Mason: People in parts of the population who are not vaccinated are at greater risk, so I presume that, from a health point of view, there is a good purpose behind the scheme. However, you are saying that despite the good purpose of encouraging people to get vaccinated, it could fall foul of some of the 2010 act.

Dr McMillan: Yes, there is potential for that. However, as I said, the legislation is in development at the moment.

John Mason: Therefore, from a legal point of view, would it be tidier, neater and better if we were just to close all the football stadia and everything else at midnight, because that would be fair and would treat everybody equally?

Dr McMillan: I am not sure whether that is the case. I cannot give a categorical answer on that now; let me take that back to my colleagues.

John Mason: Thank you.

Alex Rowley (Mid Scotland and Fife) (Lab): My question is for Dr McMillan. With regard to how

the legislation has been brought forward, are you satisfied that the Government has clearly set out the evidence and the science that sits behind what it proposes? When the Public Administration and Constitutional Affairs Committee at Westminster looked at the matter from the UK Government perspective, it concluded that the scientific evidence was not there and that such a major step should require primary legislation. Given that the legislation was rushed through and Parliament was divided along political lines, are you satisfied that the evidence has been provided?

Dr McMillan: Of course, any such scheme requires a basis in clear evidence, and there should be no more interference in matters such as human rights or equalities law than is absolutely necessary. It is perhaps worth noting that potentially viable and less restrictive alternatives, such as evidence of a negative test, are not part of the proposed scheme. As we mention in our response, clarification as to why those alternatives have been excluded would be welcome.

Alex Rowley: Do you believe that the objective of the legislation, as well as what the Government thinks it will achieve, is clear to the public? Is it clear how the Government will measure the outcomes that it is trying to achieve? Has the Government brought forward the scientific evidence to back that up and to demonstrate that the scheme is the best way to achieve those outcomes?

Dr McMillan: From what I have seen so far, it is clear what the scheme is trying to achieve. Because of the rapid implementation of the scheme, several key issues, such as definition of terms, need to be ironed out. However, as a lawyer, I cannot necessarily speak to the quality of evidence that has been given.

Alex Rowley: Thank you. I assumed that the Law Society would want to ensure that the legislation that is going through Parliament is first of all clear; secondly, that it is supported by evidence; and thirdly, that it is going through the most appropriate route.

If the Government comes back in two weeks and says that the scheme will be extended to attendances of more than 8,000 or 6,000 or 4,000 at a football game, would we be satisfied that it has gone through the correct measures? Was the House of Commons Public Administration and Constitutional Affairs Committee correct when it said that the scientific evidence for that step is not there and that it should come through primary legislation so that it can be properly scrutinised and understood by the public?

Dr McMillan: To be clear, we agree that any legislation needs to be clear, to be supported by evidence and to go through the proper

procedures. If there is not proper evidence, that issue needs to be discussed further.

Alex Rowley: Are other panel members clear on what the Government expects to achieve? In the industries that you represent, which are football—I assume there are around four clubs in Scotland that get crowds of more than 10,000—and nightclubs, was there a problem in understanding what the Government is trying to achieve? Do you believe that its approach is supported by evidence that those specific sectors are large spreaders and that there is a clear risk?

Neil Doncaster: I am happy to answer that. It seems to be the case that in an outdoor setting, which football stadia clearly are, there is considerably less risk of transmission, but my focus is on dealing with the practical realities of Parliament having passed the introduction of vaccination passports from 1 October. The Scottish FA and SPFL's focus is on Premiership clubs. We all want to play a part in supporting the Scottish Government to ensure that the introduction of vaccination passports on 1 October is successful in terms of driving greater take-up of the vaccine and helping the country to tackle the pandemic.

Alex Rowley: Has the SPFL considered that if the objective is to encourage younger people to take the vaccine, you should be on the front foot and having discussions with clubs about how to do that? Have any football players been prominent in refusing to get the vaccine? Could clubs do more to encourage younger people to take the vaccine? Is this the best way for the Scottish FA to improve vaccine uptake among football fans, or are there other ways that you could work with the Government to achieve the same objective?

Neil Doncaster: Our football clubs have been vocal about the benefits of vaccination. Clubs and players have worked together to get as many players and backroom staff vaccinated as possible. A number of our clubs have had pop-up vaccination centres at their stadia throughout the pandemic. Scottish football is proud of how we partnered with the Scottish Government to play our part in tackling the pandemic. We all want to move forward to a situation in which we do not have to worry about vaccination and Covid rates in hospitals. Football has a key part to play in that; we believe that we are a strong partner in helping to tackle the pandemic.

Alex Rowley: Do you accept that there is evidence that football matches are a serious risk? The First Minister said that it was considering vaccination passports or much more restrictive measures such as cancelling games. Do you accept that?

Neil Doncaster: The principle of vaccination passports has been debated widely. That is not a matter for me to comment on.

As I said at the outset of the session, my focus is on ensuring that whatever is put in place is practical, workable, pragmatic and proportionate. On behalf of Scottish football, we certainly hope that the detail that emerges enables clubs to implement vaccination passports from 1 October in a way that causes the minimum of fuss and interference for fans who turn up at games, and that the scheme helps the Scottish Government to achieve its objectives.

Alex Rowley: Has Scottish football had the opportunity to contribute to this? We talked earlier about footballers acting as role models, but have clubs been able to discuss this matter? You accept that the law has been passed, but other clubs could be affected by these measures next week, or the limit beyond which these measures would apply could be reduced to 6,000 or even 4,000 fans. Is there a better way that can be found? Have the clubs discussed this among themselves? Surely we should not just always accept such moves, especially if there are questions about the evidence. Are there better ways of reaching young people, and does football have a role to play in that respect?

Neil Doncaster: I understand those who wish to continue to debate the principles behind the introduction of vaccination passports, but my focus is on looking forward and, on behalf of the game of football in Scotland, ensuring that what we have in place works well from 1 October. We understand the Government's objectives, and we want to work with it to ensure that what gets introduced is proportionate. It is widely accepted that spot-checking is the way forward, and we are looking to work with the Government and looking for clubs to be part of the solution while ensuring that unnecessary inconvenience and bottlenecks are not caused at stadia from 1 October.

Alex Rowley: Mr Stevenson, are we any closer to having a clear definition of "nightclub"? How are the preparations going and what discussions are you having with the Government on introducing this measure?

Gavin Stevenson: It is clearly challenging to define the term "nightclub", because there is no such definition in law or in licensing. Although we would all like to think that we know what a nightclub is—and, in fact, 100 or so venues in Scotland identify as such—the fact is that when we start to extract the easily definable characteristics of such premises types, we find that the same characteristics apply to as many as 2,000 other premises of different types. Communicating that is therefore very challenging.

It would be fair to say that there has been extensive engagement with the Scottish Government on this topic, but I am not sure that I would go so far as to say that it amounts to meaningful consultation. Obviously, we are keen to support the Scottish Government's aims of increasing vaccination uptake and to operate our venues as safely as possible, but we would note that significant mitigations and baseline measures are already in place in Scotland. That is not necessarily the case everywhere in the UK.

We have not seen any evidence—or certainly any recent evidence—of the risks that are posed by nightclubs and, in particular, we have seen no studies that show the current risk of transmission in nightclubs with the current baseline measures and mitigations that are already in place in Scotland. That evidence might exist, but if it does, it certainly has not been presented to us.

I would note that some very common misconceptions have been repeated by people in the Scottish Government. For example, the Cabinet Secretary for Health and Social Care has expressed on radio a couple of times now his thoughts about nightclubs having poor ventilation or facing challenging circumstances in that respect. However, large nightclubs probably have some of the best ventilation systems of any premises type in Scotland, simply because of the nature of the business, and they invest heavily in ensuring customer comfort, which, to be frank, involves putting a lot of fresh air through those premises. We would be happy to demonstrate that to anyone from the public health teams and to arrange a visit for them to inspect these premises and discuss the ventilation measures that are already in place.

10:00

On the evidence, we are not convinced that vaccination passports are a proportionate measure to take at this time. For our sector in particular, they come with unintended consequences that might be virtually impossible to overcome and might in fact be counterproductive to achieving the aims of the Scottish Government.

Alex Rowley: Is there clarity across the licensing trade about the measures that are already in place? A few weeks ago, I was in a restaurant and the rules were clear: when you went in, you had to have a mask on—there were signs telling you that—and you were able to use the app on your phone to clock in and register for test and protect. However, I have been in a couple of bars where there was none of that whatsoever. There seem to be similar differences on public transport and in other areas, so it is not just an issue for the licensed trade. My concern is that a lot of the measures that we have in place, such as

social distancing and face coverings, seem to be on the wane. Do you find that? Is clear guidance and support available for publicans to ensure that the laws that are in place are able to help in the way they are meant to?

Gavin Stevenson: With any public health measure that involves asking the public to behave in a certain way, there will always be varying levels of compliance across a variety of settings. You mentioned public transport. On some occasions when I have been on public transport, virtually everyone has been wearing a face covering, but I have also been on public transport at times when virtually no one was doing so.

In our experience, there has certainly been a good effort throughout the hospitality sector to comply. However, it is also the case that it might be easier to observe that type of compliance in some settings than it is in others. For example, under the current guidance, there are the three D exemptions—that is, people do not have to wear a face covering if they are drinking, dining or dancing—and you will find that, in some premises, the vast majority of customers will be standing and drinking, which means that you will not see them wearing a face covering. However, in premises such as cafes and restaurants, people are not required to wear a face covering when they are seated and eating a meal but are required to put on a face covering when they stand up, which means that compliance might be more easily observable.

Broadly, the messaging from the Scottish Government on the topic of baseline measures has been fairly clear, and there has been good communication, through the trade bodies, to the sector to get the message out as widely as possible.

Alex Rowley: You are right to continue to make the arguments that you put forward, just as the Scottish Football Association is doing. This should not be a question of just accepting things.

How is the licensed trade recovering? Are we getting back to pre-Covid levels of jobs? I assume that you will overcome the passport stuff quite easily, but are there bigger challenges for the trade in the post-Covid period?

Gavin Stevenson: It would be fair to say that the licensed trade in general was the sector that was hit hardest in the past 18 months, except, perhaps, for the aviation sector. The businesses in our sector in Scotland are mostly locally owned small businesses that have had zero income for a significant period of time and then, when they were allowed to open, could do so only under restrictions. On average, they were trading at a loss for most of the time that they were open under restrictions, which means that they took less

income than the amount that would be required to break even. That varied across the different subsets of hospitality. For example, a restaurant that usually closed at 11 pm and was, therefore, able to trade broadly as it normally would, might have been able to break even, but a nightclub that had to reduce its capacity by 50 or 75 per cent because of all-seated drinking would not have been able to break even, even when it was allowed to open during the restricted periods.

From the surveys that we have done across our membership, we know that the cumulative impact is that, on average, small business owners have taken on a huge amount of debt just to survive the pandemic—to keep their staff employed, the rent paid and the business afloat. For the smallest of pubs and bars, the numbers that we are getting back indicate that those small business owners have taken on debt that is roughly equivalent to three years' worth of profits in normal times. In other words, they would have to work for three years for free, just to pay the money back. In cash terms, it will vary by the turnover and size of the premises, but a typical small pub or restaurant is likely to be somewhere between £60,000 and £80,000 in debt just now. The larger high street premises or nightclubs are in debt by more than £150,000 per premises. In order to stay afloat, survive and pay down that debt, those venues will need a clear run for years, without restrictions or any type of Government intervention that reduces their turnover or capacity, hence our immense concern about the approach that is being considered, which could have a serious impact on people's attendance at such premises and, therefore, the turnover that they can achieve.

To say that, by and large, these businesses are in a precarious financial position, would probably be quite a dramatic understatement. They are just not in a position to survive any kind of shock to their income stream and cash flow. The policy that is being considered makes that kind of shock almost inevitable. We would certainly ask for a much greater degree of flexibility and much greater engagement and meaningful consultation with the sector to find workarounds for these problems, rather than having a policy that has been decided before all the implications have been fully thought through imposed on us in just 14 days' time.

The Convener: We will have the opportunity to ask scientific evidence-based questions in the next evidence session with the medical experts.

Brian Whittle (South Scotland) (Con): Good morning. Dr McMillan, it might be a bit like slamming the stable door after the horse has bolted, but the concern in Parliament is that there has been a lack of scrutiny of the policy because of the way in which it has been rushed through.

Given that emergency Covid legislation was properly scrutinised in Parliament in a very short time, would Dr McMillan suggest that primary legislation should have been the route for vaccination passport legislation?

Dr McMillan: I am afraid that I cannot give you a categorical answer to that either. However, we have noted that the procedure through which the scheme will be introduced has reduced the opportunity for scrutiny of the proposed legislation. That legislative procedure often involves less pre-legislative consultation than normal, and that consultation is often required in order to know with clarity the nature and scope of any proposed scheme. For example, we have noted that, because of the complex and detailed definitions that are required, there are meanings, particularly with regard to terms and exemptions from certification, that are unlikely to be finalised until close to the time of implementation. Therefore, we have said that it is essential that regulations remain subject to appropriate review.

Brian Whittle: The Scottish Government's proposals indicate that regulations will impose a legal obligation on the person responsible for operating the business, who must "take all reasonable measures" to restrict entry only to those who are fully vaccinated. How, from a legal perspective, do you define "reasonable measures", given that the venues that we are discussing are so wide and varied?

Dr McMillan: You are quite right to ask that question. At the moment, it is very unclear what any "reasonable measures" might look like, and that is something that needs to be clarified as soon as possible for people who run venues.

Brian Whittle: Mr Doncaster, you have suggested that your preference in the first phase would be for spot checks in order to put less pressure on stewards and to ensure that you can put in place what needs to be in place. Given the Government's current position that this will be a digital initiative and that the system will need to be able to read QR codes, what will be the cost implication of that on clubs? After all, this will affect not just the big clubs, because when those big clubs visit the smaller clubs, the crowd will inevitably be larger than 10,000. Is there a disparity or, if you like, an inequality with regard to the ability to put these measures in place?

Neil Doncaster: You are right to point to the technological challenges. The infrastructure at clubs varies, and the extent to which any app might be compatible with existing systems is not clear. Clearly, there would be a need for costly infrastructure development at potentially all the stadia affected; it will, as you have pointed out, affect many more than a small handful of grounds, because when those clubs with higher

attendances visit other clubs—for, say, Scottish cup and Premier Sports cup games—the attendances at those matches can go over 10,000.

We therefore need to look carefully at the infrastructure, and it would be unrealistic to expect clubs to have that in place, tested and made compatible with any app by 1 October. That is why I said earlier that, in my view, visual spot checks would initially be the pragmatic and proportionate way of introducing vaccination passport checking. That would let the system bed in and enable any IT infrastructure that was developed to be fully tested before it was implemented.

What we must absolutely avoid is a situation in which the IT infrastructure does not work as intended when tens of thousands of fans turn up at stadia and we get bottlenecks. We saw what happened just a week or two ago at the Scotland against Moldova game at Hampden park; the technology worked, but it was unfamiliar to a number of fans who attended the game. It might have been a relatively small number of people but, because a bottleneck developed, we had frustrated and unhappy fans.

Initially, therefore, a visual check would be the way forward. Indeed, that was the Scottish Rugby Union's view at yesterday's round-table discussion on this issue. We should by all means look at IT infrastructure development, but we need to get a system of visual checks in place initially to ensure that we have a light-touch approach and the minimum of disruption.

Brian Whittle: Given that, I presume that you agree that any reduction in the flow of fans into a ground gives rise to the potential for unrest and security issues outside the ground.

Neil Doncaster: That is inevitable where you get queues, particularly with tens of thousands of fans turning up relatively late. It is traditional in football for people to turn up in the minutes before kick-off. In part, that is to do with the fact that fans are unable to get a drink at Scottish football stadia, unlike their counterparts across Europe, and large numbers of fans often turn up in the minutes before kick-off. Any reduction in flow rates through turnstiles is something that we need to be careful about, for exactly the reasons that I have identified, so there should be a light-touch approach of spot checks. The proportionate and reasonable way forward is to let the system bed in with the minimum of disruption.

10:15

Brian Whittle: Mr Stevenson, you represent a wide variety of venues. The technology that is required to read QR codes will be problematic for many of the venues that you represent, and there

is a cost implication for them as well. Will you comment on that?

Gavin Stevenson: Many of the larger venues that we represent have fairly similar problems in trying to process people through an entry point. As I think we mentioned earlier, we could easily have 40,000 or 50,000 people entering across 100 nightclubs every Friday and Saturday night. A queue of perhaps 500 customers expecting to get into a venue will move through the entry in 30 to 45 minutes. Any technology that is required would have to be extremely quick. For example, if we added just 30 seconds to the time that it takes to admit one person, a queue of 500 would take an additional 250 minutes, which is more than four hours' additional queuing time. We could look to front-run the queue with additional staffing but, as has been noted, there are no staff to be had anywhere in the market. Certainly, it would be impossible to attain that additional level of staffing within two weeks.

Albeit that we have wider concerns about other aspects of the policy, we would certainly endorse a pragmatic approach to implementation if the scheme is to be pushed through. Approaches such as spot checks or phased implementation to allow many of the practical matters to be resolved without harming businesses in the short term would be very welcome.

Brian Whittle: In the sector that you represent, many people who are going out do not stay in just one venue; they access multiple venues. Do you agree that the proposal will create inequality between the venues that require a passport and those that do not, and that the issue will become a deciding factor in which venues people choose to go to? As a slight aside, is there therefore potential for venues that currently class themselves as nightclubs to decide that they are not nightclubs?

Gavin Stevenson: Yes. That is a massive concern, and it is one of the fundamental flaws in the proposal that is incredibly difficult to overcome without making vaccination passports universal across all premises types. We are clear that the inequality that you describe is unfair competition. It is a Government intervention that creates a distortion in the market. No matter what definition of "nightclub" you use and whether you include 200 premises or 2,000, that distortion will be created at some point in the market. People who would have gone to a nightclub might instead choose to go to a hybrid venue, if they are not included in the scheme. If hybrid venues are included, people might choose to go to a large pub or a student union instead, because they know that they can get in without a vaccination passport.

No matter where the line is drawn, we will create market distortions and there will be businesses on

one side of the line that artificially prosper and businesses on the other side that will lose such a substantial proportion of attendance and turnover that it might put them out of business—it would likely put many out of business. There is no easy way to overcome that challenge.

Brian Whittle: I asked Dr McMillan about the legal obligation to "take all reasonable measures". Given that there is potential for venues to commit an offence, how was the industry involved in developing the idea of what constitutes "reasonable measures"? What is your understanding of the phrase?

Gavin Stevenson: To date, we have not been involved in a discussion on what "all reasonable measures" would involve. There has been no discussion in any depth of what that would cover or entail.

It is unclear to us whether we are required physically to have a person on every door into every premises during all its hours of operation checking people on entry or whether, if a group comes into a premises and one person goes to the bar to order, another member of staff has to go round every table checking every individual's vaccination passport. Alternatively, will there be an automated system at the door that people will have to use to check in, much as they have to do with the track and trace system, so that the onus is on the customer?

There is a huge differential in cost and resource between those options, and we have no idea which of them the Scottish Government is proposing. There has been no consultation on it.

Brian Whittle: I ask Mr Doncaster to respond to the same question.

Neil Doncaster: Since the announcement that vaccination passport checks would have to be carried out from 1 October, we have been engaging with Scottish Government officials. We took part in a round-table meeting yesterday and set out, as I have at the committee, what we believe would be reasonable and proportionate, particularly in the timescale concerned.

It is well understood and well accepted that spot checking is a proportionate and reasonable way to carry out vaccination passport checking. As I hope that I have made clear, a light-touch approach in the first phase of implementation would be sensible and would enable systems to bed in without causing the harms that could result if we have a more rigid system that creates bottlenecks outside stadia.

The Convener: Mr Stevenson, are bars and nightclubs using the track and trace QR codes that are already in place in restaurants as people gain entry?

Gavin Stevenson: Bars, nightclubs and restaurants all sit within hospitality and will all have track and trace posters on display at every entry point and, often, at tables and bars, with customers being reminded to check in. However, not every hospitality premises currently has a doorman at every entrance who refuses to let people in until the process has been managed for them. There would not be sufficient resources or staffing across the sector to do that.

Murdo Fraser: I have a question for Catriona McMillan. It is a follow-up to John Mason's question about ethical objections to vaccination passports.

I have had correspondence from one constituent who has a religious objection to vaccination. Some religious groups are in that position. Do you have any views on the human rights aspects of vaccination passports in that context, given that religious belief is a protected characteristic?

Dr McMillan: You are right that freedom of religion is protected by article 9 of the European convention on human rights and in the Equality Act 2010. However, as I mentioned in our submission, those are qualified rights. Whether human rights are infringed generally by vaccination certification depends on the context in which the measures are introduced and on how far they extend. Rights that are qualified under the convention may be restricted to achieve a legitimate aim, as long as the measures are necessary and proportionate. In the Czech Republic case that we mentioned, it was held to be necessary and proportionate to restrict access to schools for children who had not been vaccinated.

Murdo Fraser: Thank you—that is helpful.

The Convener: As members have no further questions, I thank the witnesses for their evidence and for giving us their time. It has been informative. If they would like to raise any further points with the committee, they can do so in writing. The clerks would be happy to liaise with them about how to do that.

I suspend the meeting to allow for a changeover of witnesses. I advise members that there will be time for a short comfort break.

10:26

Meeting suspended.

10:31

On resuming—

Ministerial Statement, Coronavirus Act Reports and Subordinate Legislation

Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2021 (SSI 2021/299)

The Convener: The next item of business is an evidence-taking session on the latest ministerial statement, the Coronavirus (Extension and Expiry) (Scotland) Act 2021 reports to the Scottish Parliament, and subordinate legislation.

I welcome to the meeting John Swinney, Deputy First Minister and Cabinet Secretary for Covid Recovery, and, from the Scottish Government, Elizabeth Blair, team leader, Covid co-ordination, governance and decision making; and Professor Jason Leitch, national clinical director. Thank you for attending this morning.

Deputy First Minister, do you wish to make any remarks before we move to questions?

The Deputy First Minister and Cabinet Secretary for Covid Recovery (John Swinney): Thank you, convener. I would like to make a brief opening statement in advance of the committee's questions.

I welcome this opportunity to update the committee on the measures that are being taken to ensure the necessary parliamentary oversight of the on-going response to the pandemic with regard to the updates that the First Minister recently gave to Parliament and the report that I highlighted to the committee on my previous appearance.

As the First Minister set out in her statement to Parliament on Tuesday, we have not made any change to the current Covid regulations, although work is continuing on preparing legislation for Covid certification. The figures that the First Minister set out clearly indicate that the surge in cases that we saw in the summer has caused a sharp rise in the number of people in hospital and is also leading to a significant number of deaths.

However, there are signs that the surge has been levelling off and that the number of cases may even be falling slightly. Although the number of cases in older age groups—that is, people above the age of 45—is still rising slightly, the rate at which cases have grown in all those age groups has slowed during the past week. That context helps to explain why the Cabinet decided not to impose any further restrictions. I am grateful to everyone—all organisations, businesses and

individuals—who has taken extra care in recent weeks to try to stop the current spike in infection. Cabinet secretaries are continuing to engage with representatives from business, the public sector and wider civic society to reinforce those messages.

As the university and college term begins, we have been working closely with universities, colleges and the wider sector to make the return as safe as possible, and we continue to work with local authorities to make schools, childcare centres and early learning premises as safe as possible, too. We will continue to require secondary school pupils to wear face coverings as well as maintaining other current mitigations in schools at least until the October holidays. As was set out earlier in the week by the Government, we will amend some of our guidance on contact tracing in schools to ensure that everyone has a clear understanding of the process.

On vaccinations for young people, the First Minister announced that the chief medical officers have taken a broad view of the benefits and risks of vaccination and have recommended that 12 to 15-year-olds be offered one dose of the Pfizer vaccine. Their advice has since been broadly endorsed by the Royal College of Paediatrics and Child Health. The Government will implement that recommendation as soon as possible and will shortly provide further information to health boards as well as, of course, to parents, carers and young people.

The First Minister also set out our approach to booster vaccinations, which will be offered to all adults over 50, to front-line health and care workers, to younger adults with certain health conditions or with health conditions that put them at higher risk and to adult household contacts of people with suppressed immune systems.

The final point about vaccination that I want to highlight—I know that members have heard from stakeholders on this point this morning—relates to Covid certification. Last week, Parliament voted in favour of the proposal to require eligible people to show proof of vaccination before they enter certain specified venues such as nightclubs or attend certain large-scale events. We are now working with businesses, events organisers and sports governing bodies to finalise the detail of that proposal and to publish sector-specific guidance. We believe that this is a proportionate measure that can reduce transmission in some settings, can encourage take-up of the vaccine and might help certain events and venues to continue to operate even when Covid rates are high.

I will move on to matters of legislation. I explained at my previous appearance before the committee that the Scottish Government's report on the Coronavirus (Extension and Expiry)

(Scotland) Act 2021 was to be laid before Parliament on Friday 3 September. That report fulfils our requirement in sections 5 and 7 of the 2021 act to lay a one-off report before the Scottish Parliament one month after the act received royal assent. It gives effect to duties in the act for Scottish ministers to report on the response to the Covid-19 pandemic, including measures relating to the holding of marriage ceremonies and civil partnerships, support for businesses and a range of other policy areas including social security support available to carers, support available to persons who are required to self-isolate for a reason relating to coronavirus, social care services and fiscal fines.

There is also a statutory instrument to discuss, but we will come to that later in the agenda. I am happy to answer the committee's questions.

The Convener: Thank you, Deputy First Minister. I will begin the questioning. From discussions with local clubs and the late-night sector—and, indeed, from the previous evidence session—it has become evident that, when the system gets up and running, it will need to work for businesses and the general public. However, people who have been vaccinated outwith Scotland and, indeed, overseas might find it difficult to access the scheme. I have also been made aware of a large backlog in second vaccinations being updated on the national health service portal. With that in mind, and given that the scheme is due to be rolled out in less than two weeks, is there any flexibility with the hard-start date or could a more phased approach be considered to iron out any teething issues?

John Swinney: It is vital that the scheme that we put in place is able to work effectively, and we are addressing the issues that you have fairly raised as part of the development of the necessary technology to enable that.

The basic position for implementing the scheme is very strong, as are the availability of the data in vaccination records and the relationship of those records to individuals. The demonstrations that I have seen of the technology give me a very high level of confidence about the platform on which we are operating. Of course, there will be occasions when the data do not correspond exactly and we have to work with the suppliers and technology companies that we are working with to address those issues as expeditiously as we can. We addressed those matters with Mr Mason at a previous meeting.

As for implementation, the Government takes the view that the scheme needs to be up and running on 1 October because of its necessity in contributing towards the efforts to suppress the virus. That is the rationale behind our urgency in this matter, but in our briefing document on the

proposals we indicate that implementation will be founded on the application of “reasonable measures” to put that into effect. Obviously, our guidance will endeavour to address that point, too.

I am not sure whether Jason Leitch wishes to add anything to what I have said about the specific issue of vaccination records.

Professor Jason Leitch (Scottish Government): The first thing to celebrate is that the vast majority of the population are vaccinated, so passports are more possible, and the vast majority of the records are good. When we launched QR codes, two weeks ago, 200,000 people downloaded their vaccination records on that day. The fundamentals are working, but the convener is right. My inbox includes two particular scenarios—as, I am sure, does hers: “I was vaccinated overseas, so how does that work?” and “I was vaccinated in the UK in two different countries, so how does that work?”

We have mechanisms in place to solve those issues. Yesterday, my colleague faced exactly that scenario, but it was fixed after one call. Other people have a slight challenge because, for instance, their maiden names are on their identification but their married names are on their vaccination records. We are fixing those issues on an individual basis as fast as we can. The fundamental tech is intact and is working, but we have to catch up with some of those slightly more complex cases.

Murdo Fraser: I will follow up on the convener’s point. I have been contacted by individuals who have season tickets for football clubs in Scotland but who live in England or Northern Ireland. In just two weeks’ time, they will have to produce vaccination certification. I understand that there is not currently a system that would permit them to access their football clubs. Is that issue being resolved? Will it be resolved in time?

John Swinney: The work is under way to do that. As Professor Leitch has said, individual circumstances might need a level of manual intervention to resolve the issue for individuals. At this stage, if people are in the situation that Mr Fraser has highlighted, whereby they have had a vaccine in a different jurisdiction and need to resolve the implications of that for their vaccination certification, I encourage them to engage in the practical mechanisms to resolve those issues. Obviously, as time goes on, we will be able to refine further the systems in the common travel area so that they all speak to each other effectively, which will avoid the degree of manual intervention that we have highlighted. I reassure people that the steps that are required to resolve those issues are able to be taken.

Murdo Fraser: Thank you for that. Let me press you on that point. Individuals have contacted me to say that they have been on the Scottish Government website, where the information says, “Work is being done to resolve this issue,” but they have told me that there is no signposting to the exact steps that they need to take to resolve the issue. Can you provide some clarity?

John Swinney: They would do that through the NHS Inform helpline, but perhaps Jason Leitch can provide some detail.

Professor Leitch: A number of scenarios cross over here. The fundamental scenario is non-Scottish residents, some of whom are overseas, who have season tickets for Scottish games or who want to come to a Scottish music festival. That is not about Scots who have been vaccinated in different places; that is about, for example, people coming on ferries from Northern Ireland to go to Rangers-Celtic games.

We will have to recognise overseas vaccinations up to a point. There are some technical challenges about where people were vaccinated and which vaccine was used, but, in the common travel area, the vaccination records will be transferable. Those individuals will need vaccination evidence from their country and, at this stage, that will probably be a paper copy, which will be acceptable. Eventually, as the Deputy First Minister said, the common travel area will have one transferable vaccination record, and the World Health Organization is working on one for the world, so it will get easier. The EU has a green tick system that is spreading wider—Italy, France and Spain are using that system. I anticipate that, eventually, all those systems will talk to one another, but, just now, they do not. Therefore, people from Belfast who come to Ibrox or Celtic Park will have to bring a paper record of their vaccination.

Murdo Fraser: Thank you. It is very helpful to get that on the record.

A short time ago, we heard evidence from Neil Doncaster, who raised a number of practical issues around implementation, one of which was the practicality of stewarding at football grounds. As everybody knows, there are issues in the labour market at the moment. Recruiting the number of stewards that would be required to make the system credible is a real challenge for clubs, notwithstanding the cost implications. Has the Scottish Government reached a view on whether spot checks will be deemed sufficient? What other practical engagement is there, and what guidance is being given to clubs about how the system can be set up within the next two weeks?

10:45

John Swinney: The point that Mr Fraser raises—which Neil Doncaster expressed this morning—is entirely reasonable. We are aware of the labour market challenges, which are visible to all of us, and the challenges around the availability of stewards are well documented. I do not in any way, shape or form dispute that point—I accept it, hence the rationale in the Government’s paper that we published last week, in which we indicated that there was a necessity for organisers to take reasonable measures and that there was likely to be a proportionate approach in different settings such as a crowd of 200 versus a crowd of 60,000. We envisage that there will have to be different approaches, and we are working through the issues in detail with football authorities in order to have that proportionate approach—principally because they will be the ones with the big crowds that will be affected, although other events and sectors will also be affected.

We are trying to encourage a climate in which vaccination uptake is understood to be a significant protection for the country against the spread of the virus. Even though there may not be a check of absolutely everybody who attends a football game, the more that we can do, the more we can make these events safer and less likely to be places in which the virus is transmitted and the more we contribute to the suppression of the virus.

We are actively involved in discussions with the football authorities and other players on these questions, and a proportionate approach is likely to be taken, as we highlighted in last week’s paper. As we also indicated, guidance supporting that information will be available to relevant parties.

Murdo Fraser: That is very helpful.

I have one more question. It is on the slightly different issue of vaccination certification, and it came from a constituent who emailed me this week. He said that he downloaded his record of vaccination and was able to change every element on the certificate. In fact, he sent me a copy of his download, in which he had changed all the information. He was even able to remove large sections of the QR code. Is that an issue? How robust is the security around this? Although I hope that only a small minority of the population would ever seek to amend their vaccination certificate, how robust are the mechanisms to make sure that it does not become a widespread problem?

John Swinney: I accept that it is possible for somebody to change names and text in a PDF document. However, if one was to change one’s QR code, one would not get into the football match, because the QR code would not work—it would not scan or be valid. Somebody might want

to play around with the shading or detail of the QR code but it would be pointless, as it would not get them into the game because it would not work. That question therefore mystifies me a little bit. The QR code—which is the element that has to be absolutely robust—cannot be tampered with to give it a different effect.

The Convener: If the committee does not mind, I will go round members in reverse order this time.

Brian Whittle: Good morning, cabinet secretary and Professor Leitch. I will ask a question that I also asked during the previous evidence session. Given that venues may be committing an offence if they do not “take all reasonable measures”, what involvement did the industry that is affected have in developing what constitutes “reasonable measures”? Gavin Stevenson suggested that the Scottish Licensed Trade Association was not consulted at all on the matter. To make it work properly, all the sectors will have to understand what constitutes a reasonable measure in a wide variety of potential venues.

John Swinney: There are two elements to that question; the first is about engagement and the second is about what reasonable measures are. On engagement, I appreciate that this is being done quickly, but a lot of stuff around Covid has had to be done quickly because of the nature of the situation that we face. The rationale for us acting quickly in that respect is twofold.

First, we face a very high level of cases. The point has been made to Parliament that, if we had had case numbers a year ago of the type that we have now—although they are slightly lower than they have been—we would have been in lockdown. Thankfully, the vaccine provides us with a huge amount of protection against that, but we still have very high levels of case load, which flows through into levels of hospitalisation that are resulting in well-documented pressures on the national health service and all its constituent parts. There is a need to act swiftly to suppress the virus. That is the nature of the urgency around engagement.

The second point in relation to engagement is that we have had a range of discussions. The First Minister and I were involved in a session the other day with a variety of stakeholders, and representatives of hospitality sectors were involved. I cannot recall off the top of my head whether Mr Stevenson was involved as there was a large number of participants. Jason Leitch and the finance secretary have had similar discussions with other sectors, and our officials are involved in dialogue to understand the practical issues. We are actively involved in those discussions in order to make sure that we hear the practical issues so that we can shape the guidance to ensure that

there is a clear understanding of what is envisaged in the process.

That brings me to what reasonable measures are. Clearly, we can help organisations only by providing the necessary context, detail and information that allows them to form their view about reasonable measures. Having listened to the evidence that the stakeholders on the first panel provided, I note that there is willingness to do that and to be engaged in the implementation of such a scheme. They appealed for an understanding that there may be steps that they have to take to get more reasonable measures in place, and I certainly give an assurance that the Government is listening to that message and argument as we formulate the guidance.

Brian Whittle: The issue is not only that they have to form an opinion on the definition of reasonable measures, but that they have to implement it within two weeks. You will understand the concern that there is potential for offences to be committed.

John Swinney: I understand that, but all those organisations will to some extent, at an organised event or venue, be carrying out some form of checking of individuals who are coming in, whether that is through ticket checks, purchases or whatever. We are asking that another element be introduced—which, with the assistance of technology, should not add a significant burden to the process—in order to provide an extra layer of public safety and security regarding the spread of the virus. We will provide the necessary guidance that will set out what we consider to be reasonable measures to undertake such an endeavour, and in formulating that we will continue to have discussions with the relevant sectors.

Brian Whittle: As I discussed with Neil Doncaster, vaccination passport checks will be implemented by all clubs, even small ones, because there is potential for crowd size to be taken beyond 10,000 people when bigger clubs visit. You will recognise that there are varying abilities to finance that. One of Neil Doncaster's suggestions was that initially, in phase 1, as the technology is being introduced, it would be more practical to instigate spot checks. Has the Government considered that?

John Swinney: I appreciate that crowd sizes vary significantly around the country, but some venues simply cannot accommodate more than 10,000 supporters. It does not matter how many supporters Rangers or Celtic bring along, because only a certain number of people can get into the ground. There are limiting factors. Before I came here today, the Minister for Parliamentary Business was telling me that St Mirren can accommodate only 8,000.

Spot checks are a valid issue. As I indicated in my answer to Mr Fraser a moment ago, in the paper that we published last Thursday, the Government envisages a proportionate approach in larger crowd settings. There is undoubtedly the possibility of that approach being taken.

Brian Whittle: I think that you need to have a word with your colleague, because the rule for the premier league is that all clubs need to have a 10,000 capacity all-seated stadium before they can—[*Interruption.*] Is that not the case any more? There you go. I have learned something new today. I thank the cabinet secretary for that.

John Swinney: There you are.

Brian Whittle: I have one more question. Earlier, the representative from the hospitality industry indicated that there is a potential inequality because people will choose venues based on whether they will need to produce a vaccination passport. Nights out often involve multiple venue visits. Do you recognise that there is a potential inequality regarding where people will choose to have a night out?

John Swinney: I recognise that point, which is material to the definition of a nightclub and which relates to a point that representatives of the nightclub sector have put to me. If we look at venue A, which, for argument's sake, we will say closes at midnight, and venue B, which closes at 3 o'clock, we can see that there are two very different propositions, even if both venues involve music, dancing and the availability of alcohol. If someone has been out since the early evening, going to a venue that closes at midnight could make for a long night, but if they are out until 3 o'clock in the morning, it is a very different proposition. However, there might not be an awful lot to distinguish the two venues, and that is one of the issues that we are wrestling with.

We are discussing that with the sector to make sure that we do not create a situation where there is disadvantage because of the way in which the definition is constructed. We are looking at that issue very carefully in order to try to resolve it.

Alex Rowley: I heard what the Deputy First Minister said about a proportionate approach. It will have to be proportionate because, with the timescales that you have given, I am not sure that it could be anything else.

I have a few questions, one of which is on vaccine take-up. Professor Leitch says that it is really good, but what is the up-to-date position on it? What work is being done? Have you identified where there are specific problems? What analysis has been done where there is not the same level of vaccine take-up? For example, it has been suggested that there is lower take-up among people from lower socioeconomic backgrounds

and young people in general, although the take-up figures that were given recently for people returning to St Andrews university were way above anything that I had expected, so that is not true of all young people. There is also a suggestion that there is lower take-up among people from certain ethnic backgrounds and communities, and refugees and asylum seekers.

Where do we have such issues? Is the Government doing targeting and asking why there is lower take-up in certain areas and communities? It would be useful to get a response to that question and to see something in writing that sets out the approach.

11:00

John Swinney: Those are all significant issues. I will talk through some of the points on vaccine uptake and the headline direction and I will perhaps rely on Professor Leitch to add specific details. I will go on to address some of the points that Mr Rowley has legitimately raised about particular groups and the efforts that are taken to try to increase uptake.

Uptake of the vaccine has been very high. The uptake level in a routine flu vaccine programme pre-Covid, for example, would be of the order of perhaps 65 to 70 per cent. In the over-40s cohort, the level of double vaccination is significantly in excess of 65 per cent; indeed, it is over 80 per cent now.

Professor Leitch: It depends on which way we cut it. The worst figure for the 40 to 49s is 91 per cent. The figure for everybody who is over 40 is above 90 per cent.

John Swinney: Compared with the uptakes in normal vaccination programmes, that is a really high uptake for the over-40s. The figures for the 30-to-39 and 18-to-29 cohorts have been at lower levels. Professor Leitch can give the specifics on where those figures are now.

Professor Leitch: We must remember that vaccinations for the 18 to 29s have not been as available because we did not start them until much later. The figures for that cohort are 76 per cent for first doses and 60 per cent for second doses, so three quarters have taken up the offer of vaccination and catching up. The figures for 30 to 39-year-olds are 83 per cent and 73 per cent respectively. The programme for 16 and 17-year-olds has been open for two weeks and 65 per cent have had a first dose, which is astonishing.

John Swinney: The general picture on vaccination is therefore encouraging. The numbers relating to 16 and 17-year-olds, which Professor Leitch has shared, are an indication of real enthusiasm to come forward. I pay tribute to

the school community, which has done tremendous work to encourage young people, and to young people themselves, who have exercised tremendous leadership. For example, I saw senior pupils from all the Perth city schools, who were involved in a venture in my constituency at the Dewars ice rink vaccination centre, promoting that to their peers. That was very successful. That is probably the best communication that there can be to encourage uptake.

The general position is encouraging but, comparatively speaking, we have weaknesses among younger people—the under-30s—and we have challenges in some areas of the country that suffer from socioeconomic deprivation, and in black and minority ethnic communities. The Government has looked carefully with health boards at the practical deployment of services and vaccination opportunities in order to ensure that we try to counter those. Mr Rowley will be familiar with the situation in his locality. His health board will have been offering various drop-in opportunities at different places to try to address that.

A lot of the approach is focused on localities in which we know that there are weaknesses. However, we cannot oblige people to take up the opportunities in a voluntary vaccination programme. We can maximise the possibilities and availability, but we cannot oblige people.

I assure the committee of two things. The first is that we should be pleased by how much progress has been made. It is a tribute to the vaccinators around the country, who have worked incredibly hard. The second is that we are taking focused measures to boost uptake where we possibly can.

Professor Leitch: You have heard the numbers, so I will not go over them again. There are three groups that are more challenging than the average, although there are of course exceptions. They are the young, the socially deprived and some special cause groups consisting of people who are particularly vaccine sceptic. An example of the third group is the Polish community, because a lot of their information comes from Poland, which is the most vaccine-sceptic country in the world. We have to adjust our communication with and routes to access each of those populations. There are tactics and mechanisms to do that, and we need to do three things.

First, we must make the vaccine as accessible as possible. We must increase access by opening mobile vaccination units in, for example, the car parks of further education colleges. My sister works at the City of Glasgow College. It had little influence over what happened, frankly, but it opened for a morning and in four hours it dealt

with 200 people who were coming back to the institution.

Secondly, we must adapt our communication to suit the group that we are dealing with. A 52-year-old guy talking to 16-year-olds does not really work, but I can help the relevant Young Scot panel by giving it information, and those young people can help in the schools and further education colleges.

Thirdly, although we should not spend too long on this, we have to deal with misinformation. As we go down the age groups, misinformation becomes more of a problem because of social media and younger people's access to that misinformation. All that we can do is to use trusted voices to get the correct information out. MSPs are part of that mechanism, and you can help us in that environment as we fight against that misinformation.

Alex Rowley: Misinformation is a big concern. I speak out against it, and was glad to hear the First Minister speak out against it last week. We need to be less namby-pamby with such people, and to confront the misinformation that they are spreading.

How are discussions about the current laws going with the retail and transport sectors? I have raised this point before; shop workers tell me that their managers do not see it being the role of shops to enforce anything to do with wearing face coverings. That means that we can go into some Scottish chain shops and see the staff wearing masks but fewer and fewer other people doing so. Do you agree that it is the case that, over time, as fewer people abide by the rules, the rules will become pretty pointless? I once mentioned Aldi's green-light system to you. Other retailers have good systems in place and they approach people about wearing masks. However, some do not, so shop workers are being left vulnerable.

John Swinney: I agree 100 per cent about the importance of the matter, and I can reassure you that we are making efforts to pursue it.

The other day, I saw a social media message in which a clinician shared a photograph of himself dressed head to toe in personal protective equipment, wearing a heavy-duty clinical face mask. It looked unbearably uncomfortable. The message that he set alongside the picture was, essentially, "If all you're moaning about is wearing a face mask to go to the shops, come and stand where I've been standing for a minute." I think that that made the point perfectly. Wearing a face covering is the least that we can ask people to do to ensure that they are taking precautions to stop spread of the virus.

All the baseline measures—wearing a face covering, observing physical distancing where

possible, coughing etiquette, hand-hygiene procedures and so on—will interrupt spread of the virus, so it is important that we reinforce the messages on them.

About three weeks ago, the Cabinet discussed the issue. General frustration was expressed that, after 9 August, there had been a sense that there could be relaxation of those baseline measures.

We therefore took a number of steps. We deputised cabinet secretaries to intensify stakeholder discussion—basically, to get on the phone to supermarkets, retailers, transport companies, universities and colleges. Members of the Cabinet did that, along with their officials, in order to have those conversations.

Then, two weeks ago, I convened a stakeholder discussion involving about 170 organisations, including representatives of the retail sector and all the supermarket chains, transport companies, education institutions, local authorities, business organisations and trade unions. The aim of that was to reinforce the importance of application of the baseline measures. Of course, in such a conversation involving a range of stakeholders, some will be pressing strong arguments that are supportive of what the Government is doing. For example, I was delighted with the degree to which the trade union representatives on the call reinforced the message. They are, understandably, concerned about the wellbeing of their members. It was a helpful call that strengthened the attitude to application of baseline measures.

On Tuesday, the First Minister and I convened a follow-up call that included much the same cast list. There was quite a bit of feedback from the retail sector that the messaging from the Government about turning up the heat on following baseline measures had helped in the retail environment. Ministers have undertaken specific communications to support retail workers and to encourage members of the public to be respectful of those workers by ensuring that they wear a face covering if they are asked to do so by a retail employee.

I hope that that reinforcement of the baseline measures is contributing in part to the tempering of the level of infection in society. As the First Minister reported to Parliament on Tuesday, we are in a better place than we were last week and the week before.

I assure Mr Rowley that we intend to have no let-up in encouraging and motivating organisations to follow the baseline measures. I think that most organisations accept the importance of that, because they can see that, if we do not do it, we might have to do other things that they will like even less.

Alex Rowley: This morning, the front pages of the *Daily Record* and *The Scotsman* carried horror stories about people not getting ambulances. They are real-life stories. How prepared are we for this winter? Even before Covid, the NHS struggled in winter—we all know that, and I have dealt with it in various forums. How prepared are we, given that we are in a pandemic and that people will be out and about so we can expect issues with things such as flu? Should the public be concerned about getting through the winter?

John Swinney: The winter preparations started some time ago in order to ensure that we are ready for the pressures that are inevitably put on the health service during autumn and winter. Frankly, that is why the Government is taking some of the steps that we are taking. I accept that they are not the most popular measures that we have ever taken, but they have to be taken in order to try to suppress the prevalence of the virus.

I do not have today's numbers in front of me, but on Tuesday we had 1,064 people in hospital with Covid, which is a very high number of admissions to hospital because of Covid. The Cabinet regularly sees modelling of what might happen if we do not suppress levels of the virus. Those levels translate into levels of hospitalisation.

There might now be a different ratio. Back in the early part of the pandemic, about 13 per cent of people who had positive tests for Covid were hospitalised; now, it is about 2 per cent to 3 per cent. The difference is that the level of positive tests is much higher today than it was 12 months ago, which translates into more people, which puts more pressure on the national health service.

11:15

In addition to that, the national health service is undertaking two other aspects of work. It is providing the normal emergency care that is necessary—Mr Rowley mentioned news articles about very alarming and totally unacceptable circumstances—and it is dealing with routine elective work, which had been slowed up or paused entirely because of Covid. Therefore, the national health service is under phenomenal pressure. What we can do in advance of the winter is suppress levels of Covid in order to reduce the number of hospitalisations and to relieve some of the pressure. That will work across all aspects of the health service, whether it is ambulance services, acute admissions or elective care.

There are huge pressures on the national health service. Winter preparations have been and continue to be made—we have more people available to work in our national health service—

but there will be challenges resulting from the level of Covid in our society.

The Convener: I am conscious of the time. John Mason is next.

John Mason: My understanding is that quite a few countries have used vaccination certificates already, so I presume that we can learn from them. For example, I understand that Greece announced its scheme on 28 May and that there was a big uptake of vaccinations in June before the certificates came into operation in July. I do not know whether you saw the previous evidence session; in it, Mr Doncaster argued that we should be more like France, where vaccination certificates are required for entry everywhere, so that the scheme would be simple and understood by everyone. What have we learned from other countries' experiences?

John Swinney: We have learned that vaccination certification can fuel vaccination uptake. In the short period since we announced that the introduction of vaccination certificates was likely, there has been an increase in uptake in certain groups, so we have learned from that. There is obviously a debate to be had about how extensively vaccination certificates should be applied. The Government is crystal clear in its view that we will never use them for eligibility for public services. That will just not be considered.

However, there is a legitimate argument, which we are not pursuing at this stage, for extending vaccination certificates across a wider range of facilities. We want to avoid that, but my response to that flows from my response to Mr Rowley a moment ago, which was that we must take all reasonable steps to suppress the virus, to protect the national health service and, ideally, to enable us to avoid further restrictions that could have a greater impact on society as a whole. We want to avoid that if possible.

John Mason: I also ask Professor Leitch about other countries' experiences.

Professor Leitch: I can partly deflect that question—which I have got very good at—to the politicians who actually have to make the choices.

The public health advice is fairly binary; it is not complex. Being vaccinated is better than being unvaccinated in pretty much every context—this room included. I would be more comfortable in this room if everybody in it were vaccinated. I imagine that John Mason would be, too. That would be true in nightclubs and in sports stadia, and it would be true in my house.

Therefore, it becomes a political judgment about what to do with the information and how we address the breadth and content of Covid vaccination certification. Countries are making

different choices. Israel was first, with a green pass that included testing, previous infection and vaccination. Most recently, New York has introduced a version of that, as have other parts of Europe. Scottish politicians, on advice from public health advisers—remember that economic and social policy advisers are sitting beside them—made a choice to do what has been decided as the initial phase of Covid certification. There are arguments for going broader or for going narrower, and for changing the content or for keeping it the same. In the end, those are the judgments that are to be made.

However, the fundamental public health message is that people should get vaccinated. The certificate does two things. First, it makes the location safer. Secondly, it incentivises people to get vaccinated. From a public health perspective, then, it is a bit of a no-brainer. I understand that there is complexity in implementing it all, but that is an entirely different thing—it is not a public health issue.

John Mason: On exemptions, a constituent of mine has a range of health problems but, as I understand it, her general practitioner and clinicians have not yet decided whether it is wise for her to get the vaccine. That is a purely medical decision, but where does that leave her? Do we press the clinicians to make the decision, or will she just be restricted in where she can go?

John Swinney: There are two issues to address in that question. First, the question whether the lady in question should be vaccinated is an exclusively clinical matter, so I will say nothing that would intrude on such decision making. These are, in some circumstances, very difficult judgments. It is estimated that fewer than one in 1,000 people—or 0.1 per cent—cannot be vaccinated for medical reasons. We are therefore talking about a very small number of people, which I think demonstrates the difficulty of the clinical judgment that has to be applied. As I have said, I would not seek to intrude on that.

Secondly, on the implications of non-vaccination for a vaccination certification scheme, we have to ensure that the scheme does not disadvantage people in accessing venues if they choose, as an unvaccinated person, to do so. In other words, someone who is unvaccinated for entirely legitimate and proper clinically assessed medical reasons should not be disadvantaged if they want to see their favourite football club playing. Obviously that will have implications for other members of society, but there is a limited risk of exposure. Fundamentally, though, that is a judgment for the individual, so we have to ensure that the vaccination certification scheme in no way disadvantages or discriminates against them.

John Mason: That was helpful. Professor Leitch, do you wish to add anything?

Professor Leitch: The one in 1,000 figure comes from global research and is about right, although we do not know whether it is higher or lower. The two big groups that are involved are people who are receiving end-of-life care and people who are receiving not all types of chemotherapy, but active chemotherapy for serious cancer. Those individuals are unlikely to be in big groups going to venues. Of course, it is not impossible that a person who is receiving end-of-life care will want to go and see their favourite football team, so we will have to make allowances for that.

However, clinical exemptions from vaccination are very rare. The procedure is so safe that, even for people who are sick, it is often the right thing to do. Clinicians will make those choices. We have given advice on what we will put in place and what that will look like. The scheme will have to allow for such clinical exemptions; I say again that they are rare.

John Mason: On a different issue, I understand that the regulations are going to be introduced quite late on and will be subject to the made affirmative procedure. Would it be possible to bring them forward a little bit so that we can approve them before the end of September?

John Swinney: I will continue to consider that, but the necessity of having the regulations on the statute book by 1 October and having time for discussions and dialogue with stakeholders, and the required time for drafting and processing, suggest to me that it will be most likely that we will use the made affirmative procedure. However, as I have said, I will continue to consider the matter.

John Mason: As an extension to that point, if hospital numbers were to fall dramatically over the next fortnight, would we just forget about certificates?

John Swinney: I do not think that we would, for the reasons that Mr Rowley suggested in his question about the challenges that we face over winter. In that scenario, we might be coming back round to the issue in three weeks' time. To reinforce that point, I draw on the contents of the United Kingdom Government's plan B, which includes vaccination certification; I think that it has an eye on the winter problems and the challenges that it will face.

John Mason: Previous witnesses talked about the expense of apps and checking people as they go into venues. My experience—I think that people know this—as a Clyde Football Club supporter, is that my season ticket is on an app that is checked when I walk in. There is no problem—the staff use their own phones for doing that, and there does

not seem to be an issue. What is your response to the point about the cost to businesses?

John Swinney: I agree very much with the point that you made about the technology, Mr Mason. It is routine technology that is widely available through free downloadable apps for individuals and for those who undertake checking. It has been designed to be within the firmament of the technology that we are all accustomed to using nowadays.

The Convener: I apologise to other members who wanted to ask more questions, but we are really pushed for time. That concludes our consideration of the agenda item. I thank the Deputy First Minister and his officials for their time today.

We now move to consideration of the motion on the made affirmative instrument that was considered under the previous item. Deputy First Minister, would you like to make any more remarks on the Scottish statutory instrument before we vote on the motion?

John Swinney: I want to place on the record that the SSI amended the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021, which came into force on Monday 9 August 2021. The regulations that we are discussing, which came into force on 3 September, made a minor amendment to enable performers to perform or rehearse for a performance without face coverings in situations where distancing or partitioning are not possible. For clarity, that exemption will apply for as long as there is either a partition or a distance of at least 1m between performers and other people, including the audience, but that does not include people who are performing or rehearsing with the performers or assisting with the performance or rehearsal.

The Convener: Thank you, Deputy First Minister. I note that no member wishes to speak on the motion.

Motion moved.

That the COVID-19 Recovery Committee recommends that the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2021 (SSI 2021/299) be approved.—[*John Swinney.*]

Motion agreed to.

The Convener: The committee will in due course publish a report to Parliament setting out our decision on the statutory instrument.

That concludes our consideration of the agenda item and our time with the Deputy First Minister. I thank him and his officials for their attendance.

The committee's next meeting will be on 23 September, when we will continue to take evidence on vaccination certification. We will also take evidence from the Cabinet Secretary for Net Zero, Energy and Transport on the ministerial statement on Covid 19 and on subordinate legislation.

That concludes the public part of our meeting. I will allow the witnesses to leave before we continue in private session.

11:28

Meeting continued in private until 11:30.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba