



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Recovery Committee

Thursday 31 March 2022

Session 6



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COVID-19 RECOVERY COMMITTEE

11th Meeting 2022, 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:

Professor Jason Leitch (Scottish Government)

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 31 March 2022

[The Convener opened the meeting at 09:15]

Coronavirus (Recovery and Reform) (Scotland) Bill: Stage 1

The Convener (Siobhian Brown): Good morning and welcome to the 11th meeting in 2022 of the COVID-19 Recovery Committee. This morning, we will take evidence on the Coronavirus (Recovery and Reform) (Scotland) Bill at stage 1.

I welcome to the meeting John Swinney, Deputy First Minister and Cabinet Secretary for Covid Recovery, and from the Scottish Government: Professor Jason Leitch, national clinical director; Greig Walker, bill team leader; Nicola Guild, solicitor; Laura McGlynn, head of health protection and screening; and Simon Stockwell, head of the family law unit. Thank you all for attending this morning.

Deputy First Minister, would you like to make any remarks before we move to questions?

The Deputy First Minister and Cabinet Secretary for Covid Recovery (John Swinney): Convener, thank you for the opportunity to give evidence on the Coronavirus (Recovery and Reform) (Scotland) Bill. First of all, I would like to thank the many individuals and organisations that have submitted views at the committee scrutiny stage in response to the call for evidence.

Last week, the Parliament voted to extend key provisions of the Scottish and United Kingdom coronavirus acts to September 2022. The bill that we are considering is about what should happen thereafter and proposes to carry forward around 30 important temporary measures. In line with the Government's commitment to expire or suspend temporary provisions that are no longer necessary, and the need to report on them every two months, I can confirm that more than 45 temporary measures that were previously enacted have now expired.

The measures in the bill fall into three broad categories: powers to counter future public health threats; the embedding of practical public service reforms that have demonstrated their value, irrespective of the public health position; and extended temporary measures to manage the impact of Covid, specifically on the Scottish justice system.

Provisions in the first two categories fall within the committee's scrutiny remit, and I have followed the stakeholder evidence with interest. It has, of course, been put to ministers that it would have been better to have split the bill, but there is a good reason for the Government being minded to progress with a single piece of legislation. For the most part, measures in the bill across all categories exist in temporary legislation that is now confirmed to expire in September. They all update and equip the statute book in sensible ways, as part of learning lessons from the pandemic. They were all consulted on as a coherent package in a full 12-week public consultation that took place between August and November last year, and the measures in the bill collectively support the Government's Covid recovery strategy and the recently updated Covid strategic framework.

In the particular case of public health protection proposals, it has been put to the Government that those future powers are not needed, now that Scotland is transitioning from baseline Covid requirements in law to guidance. I disagree. The move brings into sharper focus the important distinction between having appropriate powers to hand to respond to future public health threats, which I consider to be in the public interest, and using those powers.

The Delegated Powers and Law Reform Committee, which has taken a close interest in the bill, published its stage 1 report on Tuesday. I will consider the detail of its recommendations closely, but I am happy to signal, as I did when I appeared before that committee to give evidence, that I will look to work constructively with the committee on issues such as the made affirmative procedure. I am happy to consider where constructive improvements can be made to the Government's proposals and I look forward to the committee's questions.

The Convener: Thank you, Deputy First Minister.

Can you outline which provisions have been included in the bill that were not contained in the temporary emergency legislation and explain why they have been included?

John Swinney: The Government has looked carefully at all the temporary measures that were put in place, some of which had a particular time limit and have expired. The Government has operated on the principle that we do not want to keep in place temporary measures for any longer than is required.

A range of temporary provisions were put in place for the pandemic that we judge are no longer necessary and do not need to be included in the permanent legislation that we are proposing.

We have identified in the proposed legislation a number of provisions that have arisen out of our experience of the pandemic, particularly with regard to the administration of public services, and which we judge to be of practical benefit to the public and, therefore, in the public interest. We have advanced proposals of that nature.

The bill proposes to take steps to ensure that we are in a position to manage for a longer period the disruption caused to the justice system by the pandemic. As a consequence, it includes a range of temporary justice provisions that purely and simply ensure that we can support the recovery of the justice system after the huge amount of disruption that the pandemic caused.

The Convener: The committee received a submission from Dr Andrew Tickell and Professor Alison Britton, both from Glasgow Caledonian University, who concluded:

“the main provisions of Part 1 of this Bill are generally in keeping with the law already applying in England and Wales”.

However, there was one concern regarding the power to modify or amend the enactment, which I think is known as a Henry VIII power. How do the public health powers in the bill compare with the equivalent powers in England and Wales? Why was it thought necessary to include the Henry VIII provision?

John Swinney: The provisions are broadly comparable to those in England and Wales. If my memory serves me right, those provisions have been in place for the best part of a decade or more. That gets to the nub of the bill, which is the necessity of ensuring that the legislative framework that we have in place is appropriate to deal with the emergence of a major national public health issue such as a pandemic.

The legislation that the Parliament considered in this respect in the past—the two coronavirus acts—was taken through Parliament at great speed. There was significant parliamentary co-operation to enable that but, of course, the level of scrutiny that was available for the provisions was limited. Therefore, with the bill, we are taking a calm period to consider with full parliamentary scrutiny the types of measures that could be put in place should we face a further pandemic and to ensure that we have the necessary statutory force to provide for that as well as sufficient parliamentary scrutiny if the Government takes any steps within the framework of the bill.

On the point made by the legal academics that you have just highlighted to me, convener, it is important not only that we have a structure of legislation in place to enable us to handle a future pandemic but that we consider that in slow time to ensure that we have the right arrangements in

place. As I have indicated, the provisions are broadly comparable to the ones in England and Wales.

The Convener: There is a Henry VIII provision in section 94 of the Public Health etc (Scotland) Act 2008, which relates to international travel restrictions. Has that ever been used?

John Swinney: Either I will have to defer to my officials to give me further guidance on whether it has been used or we can write to you, convener, to clarify that. Unless my officials can add detail now, I propose to write to you.

The Convener: I am not sure whether anybody would like to come in. If they do, perhaps they could raise their hand, because I cannot see the other screen. [*Interruption.*] That is okay—it would be great if you could write to me, Deputy First Minister.

Why are the current procedural rules that allow for emergency bills to be progressed through the Parliament thought to be inadequate in such circumstances?

John Swinney: Again, that issue is at the heart of the discussion on the bill. The question is whether we think it appropriate to put legislative change in place at a very fast pace when a pandemic arises, as the Parliament had to do on two occasions in the spring of 2020. The legislation was handled on a very swift timescale; indeed, complex legislation was put forward in a matter of days.

It is a well-expressed view of the World Health Organization that countries should have appropriate measures and mechanisms in place to enable them to respond swiftly and appropriately to a pandemic. The Government has reflected on that as a lesson from the pandemic, and I think that that point has also been made to the committee by legal academics. Therefore, there is an opportunity for us to consider in a slower timeframe what that range of powers could look like and what powers could be enacted, should we face that situation.

Essentially, from my perspective, the nub of the matter with regard to the bill's principles—especially in its early parts—is ensuring that we have a legislative framework in place that enables us to think in advance about the types of legislative changes that we might need to make and how we can make them. That is essentially what the bill proposes to do.

The Convener: On the issue of proportionate measures, can the cabinet secretary explain the meaning of the phrase “proportionate response”? Who makes those decisions, and what are the challenges of doing so?

John Swinney: That theme has been the subject of extensive discussion with the committee during the pandemic, and it has been very much at the heart of the Government's decision making about the handling of the pandemic. Indeed, it has been central to the decision making around the four harms framework and the strategic framework.

The question of proportionality is fundamental, because it is a legal test of whether or not any measures that the Government puts in place are appropriate in a certain set of circumstances. Ministers will make those decisions and must be satisfied that, on the basis of the evidence that is available to them, there is a proportionate case for applying restrictions.

We have wrestled with that question on countless occasions over the course of the past two years. We have come to conclusions about when we judge measures to be proportionate and have withdrawn measures, because we did not believe that they were proportionate at that particular time. Ultimately, those decisions are made by ministers and, as with all decisions that are taken by ministers, they are justiciable. There have been two legal challenges to the provisions that we have had in place, and at the heart of those questions, which the courts have wrestled with, was the question of proportionality. Proportionality is not a tabulated concept but one that is based on the availability of evidence to enable ministers to take rational decisions that can be defended in the courts, if necessary.

The Convener: Finally, do you believe that a wider review should be undertaken to ensure that the Public Health etc (Scotland) Act 2008 remains fit for purpose?

09:30

John Swinney: I would contend that that is precisely what we have done. The 2008 act provides for dealing with public health incidents of a local nature and character.

I do not think that that act could be described as providing for the arrangements that need to be put in place for a national pandemic. Indeed, that distinction has been made in the evidence, or comments, to the committee by the Convention of Scottish Local Authorities, which generally welcomes the provisions in the bill. It recognises that although the provisions of the Public Health etc (Scotland) Act 2008 might deal with a localised issue or outbreak, they are not sufficient for the type of national pandemic that we have faced, as they do not have sufficient scope and reach of powers to enable that to be the case.

The steps that the Government is taking at this stage are designed to address exactly the point

that the convener raised with me. However, we remain open to considering whether any further changes need to be made, and we will consider that point as the bill progresses through its further stages of parliamentary scrutiny and before its final enactment.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning, Deputy First Minister. I hope that you are feeling a bit better.

I will ask some questions about the exercise of ministerial powers. However, before I do that, as you referred to public consultation earlier in your comments, I will ask about that first.

It is fair to say that, when it ran its own consultation, the Government found a wide degree of public concern about and opposition to what is being proposed. The committee ran its own survey with the public with a call for views. We received just short of 4,000 responses from the public, of which 90 per cent were in opposition to the bill, with people expressing concerns about the impact on personal liberty and the lack of parliamentary scrutiny over what is proposed. In two decades, I cannot remember a piece of legislation in this Parliament attracting that level of public concern. Can you?

John Swinney: I suspect that other pieces of legislation have attracted public concern. I also suspect that the degree of public concern might have had something to do with the way in which some members of the Parliament characterised the legislation. I am sure that Mr Fraser understands the point that I am making with that remark.

It is important that members of Parliament concentrate their deliberations on the substance of the issue. For me, that substance is whether we have in place the right legislative framework to deal with the possibility of a pandemic. Clearly, in March 2020, we did not, because we had to rush through two pieces of legislation in a matter of days to provide the legislative force to handle the pandemic. Our statute book was not sufficient or appropriate to deal with the circumstances that we faced in March 2020.

The Government is now learning a lesson from that experience and putting in place legislation that we consider to be proportionate and appropriate for those circumstances. The public health provisions of that legislation are to be used only in those circumstances, and there is to be appropriate and effective parliamentary scrutiny of the Government's exercise of those functions. That is the justification for the bill, and that wider appreciation of it would be clearly understood by members of the public.

Murdo Fraser: Thank you for that response.

The level of parliamentary scrutiny and ministerial accountability go to the heart of our scrutiny of the bill. I will first follow up on the convener's line of questioning about the use of the Henry VIII powers that are contained in the bill.

In their written evidence to the committee, Professor Britton and Dr Tickell said that this is a "highly problematic element which has not been adequately explained or justified by the Scottish Government."

They also said that the lack of comment on that in the policy memorandum is "remarkable", and that "this aspect of the proposals requires clear justification and anxious scrutiny."

Why do you think that it is appropriate for ministers to have those sweeping Henry VIII powers when we have a clear alternative route, which is the use of emergency legislation? As you have already accepted, that route was used two years ago to put through the Coronavirus (Scotland) Act 2020 very quickly when that was required.

John Swinney: It depends on how you look at the questions. Do we look at the experience of the pandemic and think that there are no lessons to be learned and that we should be quite happy to put through significant primary legislation in a matter of days? On other occasions, members of Parliament would rail against making significant changes to primary legislation in that timescale. Generally, in my experience in Parliament, that is not viewed as a desirable approach.

Nobody saw the pandemic coming. We were aware that there was a likelihood of us experiencing some kind of pandemic, but that did not prompt us to review our statute book. Now we have had the pandemic—actually, we are still going through it; believe you me, some of us certainly are—and we are trying to adapt the statute book to learn the lessons from it so that we can put in place proportionate powers that can be scrutinised by Parliament through the normal legislative process, which is what we are going through just now, and Parliament can decide whether it wants to change the statute book to enable the provisions.

That is the type of thinking that has gone into the legislation to ensure that we do not have to rush significant primary legislation through Parliament in a matter of days. We take stock, learn the lessons from the pandemic and put in place powers—with sufficient parliamentary scrutiny—that enable us to act accordingly when a situation arises.

Murdo Fraser: We are conducting parliamentary scrutiny now. Professor Britton and Dr Tickell said that there was "no explanation or justification" of the provision for Henry VIII powers

in the policy memorandum. In the absence of such an explanation in the policy memorandum, can you tell us why the Henry VIII powers are required?

John Swinney: The powers are being included to address potential situations in which regulations are needed to respond to a public health threat that might conflict with existing legislation. That is the justification. As with all regulations that are made under the legislation that was put in place, the powers could be used only where it was necessary to respond to a significant risk to public health as a result of the pandemic. There are significant regulatory constraints and limits around what the Government would be able to do but, fundamentally, there would have to be a significant risk to public health to justify the use of any of those powers.

That is the rationale behind those powers being in place. The threat to public health is the trigger, and there is the possibility that there might be a conflict with existing legislation that needs to be resolved.

Murdo Fraser: I will move on, as I would like to ask about the made affirmative procedure. You will know that the Delegated Powers and Law Reform Committee has commented on that and that, in evidence, Professor de Londras said that the made affirmative procedure

"is inherently problematic and should only be employed in exceptional circumstances."

Professor de Londras also said that, if regulations were made under part 1 using the made affirmative procedure, a ministerial statement of the reasons for using that procedure, explaining the alleged urgency, should be provided. Would you accept that as a proposal for a way forward?

John Swinney: There is a lot in this area that we need to look at further. I welcome the report from the DPLR Committee. I had a thoughtful discussion with that committee when I appeared before it a few weeks ago. It was quite pragmatic in understanding the challenge for the Government, which is that the made affirmative procedure generally takes about 40 days. That procedure can be utilised with greater urgency, subject to parliamentary consent at a later stage. The DPLR Committee was exploring whether there was some other approach that we could take, which might be a halfway house or a partway house within all that. I am happy to explore that. I think that the point that Mr Fraser made—I did not quite catch the academic's name—

Murdo Fraser: It is de Londras.

John Swinney: Thank you. Professor de Londras's suggestion is also pragmatic. Mr Fraser

will probably know that, in parliamentary questions last week, Dr Gulhane made a suggestion to me in relation to this area. There is scope for us to explore how to satisfy legitimate parliamentary concern on being persuaded of the merits of a particular action by the production of, for example, a statement of urgency to justify actions, as Professor de Londras suggests. I am open to discussing how we can properly address that point.

I want the statute book to be equipped with powers that enable us to act swiftly but, in acting swiftly, we also have to act appropriately. If there are other ways to strengthen the provisions of the bill to address those issues, I am open to using them.

Murdo Fraser: It has been suggested that effective parliamentary scrutiny of the bill could be strengthened by, for example, a duty on Scottish ministers to appear before a relevant parliamentary committee regularly, provision for creating a bespoke parliamentary committee in charge of scrutinising the emergency response, or a duty on ministers to provide to the Parliament a draft instrument in advance of the Government laying a Scottish statutory instrument.

Those are, in effect, practices that the Government has already followed, but would you be open to them being put into legislation?

John Swinney: I am open to considering those points. The Government's policy intention here is, I hope, crystal clear. It is to enable us to take the necessary actions swiftly and with urgency should we face a pandemic threat of the type that we have faced over the past two years.

Although we had a great deal of parliamentary co-operation in the formulation of the legislation in spring 2020, for which I am grateful to members of all parties, we made a lot of changes to primary legislation in a short space of time. Generally, Parliament does not think that that is a good thing to be doing. Generally, Parliament wants to take time and care—as we are doing now—to consider what the contents of primary legislation should be. Some of Mr Fraser's suggestions are entirely practical and pragmatic, and they could strengthen the approach in the bill.

The Government has no desire to be able to exercise powers in any unwarranted or unnecessary fashion, but we want to be able to act when we have to act because of a threat to public health. I am certainly happy to explore some of these questions further. I think that they take the form of points made in the stage 1 committee report, and I will of course reflect on them.

Murdo Fraser: Thank you.

Alex Rowley (Mid Scotland and Fife) (Lab): Good morning, and best wishes, cabinet secretary.

How do the public health powers in the Coronavirus (Recovery and Reform) (Scotland) Bill compare with the equivalent powers in England and Wales?

09:45

John Swinney: As I said in my answer to the convener, they are broadly comparable. The provisions in England and Wales have been in place for in excess of 10 years, as I think I said earlier. Situations of this type were envisaged in the legislation that was considered by the United Kingdom Parliament, and the United Kingdom Government has been able to operate under many of its provisions, supplementing them under the emergency legislation that it has introduced.

Alex Rowley: On the basis of the evidence that we have taken so far, I would say that there is general support for many of the measures and proposals in the bill. To oppose many of them would be to do so for the sake of it, because they make sense—I get that. One area that is clearly causing problems, however, is the Henry VIII clause, as it is called. As I understand it, it is basically

“a statutory power given by the legislature to the executive to alter or repeal primary legislation, without reference to the ordinary parliamentary processes of scrutiny and amendment required for Bills. While powers of this kind have been used by the UK government to adapt the statute book to the United Kingdom's departure from the European Union, Henry VIII powers are rightly controversial, as they infringe upon the separation of powers, give legislative functions to the executive, and can be imposed with modest opportunities for parliamentary scrutiny, particularly in circumstances when they are used on an emergency basis.”

You can see that there is genuine and sincere concern. Along with your partners, the Greens, you have a majority in the Parliament, so there is no doubt that you could ram the legislation through regardless. Given that there are genuine and serious concerns, particularly about that part of the bill, among those of us who believe that most of the bill makes sense, are you willing to sit down with other parties, have a discussion and reconsider the genuine concerns that are being expressed?

John Swinney: As Mr Rowley will have heard from my responses to Mr Fraser's points, I am willing to discuss with members of the Parliament of all shades of opinion how we can address any issues that are causing concern. I rehearsed with Mr Fraser the issues around what might be put on the record in relation to the justification for the use of any of the powers in advance. I hope that that is

interpreted as a welcome and positive step in that respect.

On the wider point that Mr Rowley raises with me about particular powers, I would make the point that they can only be exercised in relation to a specific and significant risk to public health. It cannot happen any day of the week; it can only happen where there is a significant risk to public health. That is trigger point number 1: there must be a justifiable case.

Secondly, if ministers were to utilise those powers, they would have to come to Parliament to exercise them, either through the affirmative process, whereby Parliament itself would be able to judge whether they were required or not, or through the made affirmative process, whereby Parliament gives its consent once the Government has taken its actions, although that is conditional on the Government taking those steps and Parliament giving its consent. Therefore, there are a number of safeguards on the exercise of any of those responsibilities.

I hope that that provides some reassurance to Mr Rowley. However, I reiterate what I said to him at the start of my answer: that I am happy to engage with other parties. As I have said, I will consider and engage with the recommendations that the Delegated Powers and Law Reform Committee made. I do not want to pre-empt what the COVID-19 Recovery Committee as the lead committee will say but I will be very happy to engage with it on its stage 1 report and any recommendations that it makes.

Alex Rowley: I look forward to having a further discussion with the Deputy First Minister specifically on the Henry VIII powers.

In the evidence that we received, the point was made that the Coronavirus Act 2020, which part of the bill builds on, levels up public health powers in Scotland to make them comparable with those in the Public Health (Control of Disease) Act 1984. The same submission also points out that wide-ranging English and Welsh regulations could be made under that act as amended by the Health and Social Care Act 2008.

Should a wider review of the Public Health etc (Scotland) Act 2008 be undertaken? Does it remain fit for purpose?

John Swinney: It is a matter for Parliament to consider, but the Government has worked to address that question in the bill. A number of the provisions in the early part of the bill amend the 2008 act. That is about using the foundation of the 2008 act as a basis for trying to address the wider issues that arise out of the pandemic.

As I said in response to the convener, that point was made well by the representative of the

Convention of Scottish Local Authorities who submitted material to the committee and gave evidence. COSLA recognised that the 2008 act works when there is an outbreak of an infectious disease in a locality and you have to take particular measures—Mr Rowley will be familiar with those arrangements from his leadership of Fife Council. The director of public health has statutory roles and responsibilities to act. However, COSLA indicated that it was generally supportive of the bill because, when it comes to a national pandemic, the 2008 act just does not get there.

If the 2008 act had been fine, we would probably not have had to make as many changes as we did in 2020. I contend that the Government is amending the 2008 act to make it appropriate for the challenges that we face now but, if members of the Parliament believe that we have to make further changes, I am open to that.

John Mason (Glasgow Shettleston) (SNP): I will move on to some of the other specifics in the bill. As you said, Deputy First Minister, a lot of the amendments that the bill makes are to the 2008 act. A couple of those are proposed new sections 86B and 86C of that act. The first talks about

“directly imposing restrictions or requirements”

and the second about

“indirectly imposing restrictions or requirements”.

I am toiling a bit to understand the difference. Will you explain why there is a difference between those two sections?

John Swinney: I suspect that I will rely heavily on the words “direct” and “indirect” in my answer but, essentially, we are trying to cover all bases so that we have the ability to intervene when there is a direct and explicit necessity to do so. The indirect provision is where we are trying to find every other possible avenue that needs to be closed off to ensure that we have a system that is appropriate for the challenges that we face. I would best describe the provisions in the new sections 86B and 86C of the 2008 act, which the bill introduces, as trying to get to that level of completeness.

John Mason: Could you maybe give me an example of regulations that would indirectly impose restrictions?

John Swinney: Let us do it this way. An example of a direct restriction would be for us to apply a particular constraint on people leaving their houses. I would say that that is a direct consequence of the measures that we are taking. An indirect provision might be that we have to ask people to observe a particular form of behaviour that is less specific than a direct provision, as in the example that I have just cited. We are trying to

find ways that we can address the limitations that would be necessary to be applied that may not be ostensibly obvious as part of the original justification.

John Mason: I do not know about other members, but I am still struggling, I am afraid. I wondered whether the indirect provision could be geographical. Although there was a national restriction for everyone to stay at home, we found during the pandemic that different parts of the country were affected differently. To an extent, individual health boards or local authority education departments could then have a bit of freedom on restrictions. Would that be covered by an indirect provision?

John Swinney: It may be that the direct and indirect comparison could relate to different levels of intensity of restrictions, for example. However, the best way to look at that is to take the view that we are trying to cover all bases as part of the exercise, rather than to look at specific measures within each category.

John Mason: I will leave it at that just now.

Another of the new sections is section 86G, which is about the review of regulations. We have had some evidence that that section is a bit vague. It says that

“Scottish Ministers must review the regulations”,

and then goes into more detail about a period of 21 days, and so on. However, it does not say what the review would entail. Do we need to be more specific? For example, do we need something about the review being published or whether a committee should look at it? How do you see the review working?

John Swinney: Essentially, I do not view that as being particularly different from the review process that ministers regularly undertake of the restrictions that we have found it necessary to put in place. Ministers have reviewed the measures that we have had in place every 21 days. We have had to consider whether the restrictions remain proportionate and we have had to report to Parliament about those provisions. My predecessors and I have appeared in front of the committee on a regular basis to consider those points.

What we have done until now in relation to scrutiny has generally been agreed with the parliamentary authorities. If members wish to advance specific amendments to the provisions as to what the review might look like or entail, we could consider that as part of the bill process. Fundamentally, the willingness to be open and accountable in relation to the explanation of any of the provisions lies at the heart of what the Government intends to do.

10:00

John Mason: Moving on to the subject of bankruptcy, we had a fair bit of discussion on the threshold for when someone becomes bankrupt. There was quite a lot of support for the level of £5,000. However, if inflation is 10 per cent, that £5,000 is effectively worth £4,500 after a year, and it is worth £4,000 after another year. I do not know whether the cost of living challenges make any difference to the Government’s thinking. Do you think that £5,000 is the best level?

John Swinney: We think that £5,000 is a reasonable threshold, but Mr Mason makes the entirely fair point that we must be careful to set the threshold at an appropriate level. On cost of living challenges, we have had pretty low inflation for the past 30 years, and we are now dealing with a very different situation. That is the best judgment that the Government can come to, but I am happy to listen to representations from stakeholders and members of the Parliament on that question.

John Mason: Sticking with bankruptcy, there is a question around electronic communications. We have all moved on in that respect during the pandemic. The point was made, however, by the Institute of Chartered Accountants of Scotland—of which I am a member—that creditors are perhaps more ready, able and willing to operate in the electronic environment, whereas debtors might not be so much. The suggestion is that we should perhaps consider creditors and debtors differently from that point of view. Even debtors who had been able to communicate electronically might not be able to do so as their financial situation gets worse.

John Swinney: We have to be careful here. Mr Mason will recognise the benefits of digital interaction, which we can see in all walks of life. We are trying, through the provisions in the bill, to make a set of pragmatic moves that will enable us to reform our public services in the light of the experience of the pandemic, where the technology allows us to do so.

We must always be mindful of whether everyone can participate using such platforms. If not, there is a need to have alternative arrangements in place to ensure that all parties can participate effectively in the administrative process that is involved. Although the digital approach suits many people, we must ensure that all individuals can access services accordingly.

John Mason: That leads me on to the final area that I would like to consider, which is remote registration of births and deaths. We did not have remote registration of births in the temporary legislation, but that is now being brought in, and you could perhaps say something about that.

We had some evidence that, for registrars and local authority folk, seeing people face to face can make a real difference. For instance, a mother registering the birth of a baby might be unsure whether to have the father's name there. With vulnerable people who need help and guidance, that might be done better face to face. How will the balance be struck between continuing in-person services and encouraging or allowing remote registration?

John Swinney: It is not an either/or. We must ensure that we have arrangements in place to meet everybody's needs. For some people, registering remotely will be much more convenient and straightforward and they will be happy to do so. Others might feel reticent and anxious about it and an in-person appointment might suit them better. The best way to approach that is by providing the options that enable us to better meet all individuals' needs in recognition that those might differ from individual to individual.

John Mason: Are there enough safeguards in the bill to ensure that, if a local authority began to withdraw an in-person service, it would still have to provide it to some extent?

John Swinney: Yes, that is the case. However, members might wish to come back to the point to provide a degree of further legislative constraint if the bill is not felt to be sufficiently strong on that.

Brian Whittle (South Scotland) (Con): Good morning, cabinet secretary and panel. I hope that you are on the mend, Mr Swinney.

You probably recognise that we do not agree on some of the provisions. I go back to the word "proportionality", which is what exercises me on the bill. As you said, ministers will decide what proportionality is. I assume that you recognise that there is a level of subjectivity to that.

On safeguards and balances, parliamentary scrutiny is the main safeguard in such decisions. Do you acknowledge that, by introducing the bill, you basically bypass that?

John Swinney: We certainly do not bypass Parliament—not in any shape or form. The bill will come into effect only if Parliament approves it. That is the first layer of parliamentary scrutiny. Parliament has to agree to put in place whatever proposals emerge out of the bill.

The second layer of scrutiny is that Parliament makes provision for the exercise of the affirmative and made affirmative procedures. For some time, it has directed that regulations of that nature may be introduced. Those procedures are two other levels of parliamentary scrutiny. The affirmative procedure requires an order to be placed before Parliament, for it to be discussed and considered and for Parliament to vote on it before it can be

brought into effect. The made affirmative procedure allows ministers to bring an order into effect, but it can remain in effect only if Parliament consents to it.

Primary legislation and the regulation-making power fully satisfy parliamentary scrutiny. As I signalled in my answers to Mr Fraser, I am open to considering whether any additional safeguards could address the concerns that Mr Whittle puts to me. There must be agreement that we need to have a statute book that is fit for purpose, because Mr Whittle and his colleagues supported the two coronavirus acts in 2020. They obviously saw the need for there to be legislation in that respect, so there is no disputing the fact that that is necessary. The point of dispute is the mechanism for going about it. If we can make progress in that respect, I am happy to engage on that point.

Brian Whittle: Thank you, Mr Swinney—that is helpful. Contrary to what my colleague Mr Rowley said, the driving force is to make sure that we are prepared should this ever happen again. I want to focus on preparedness.

As you have said, you did not feel that the appropriate legislation was in place in March 2020 when it came before the Parliament for the first time. However, in my view, the Scottish Government should be focusing on preparedness for future health emergencies. For example, we should remember the Silver Swan initiative, which was run to test preparedness for eventualities such as Covid. We have discovered that the recommendations of that had been allowed to lapse. Having had that experience, would it not be more relevant to ensure that those recommendations and any further updated recommendations that are made following the pandemic are adhered to? Is that not the direction that we should take? It was the lack of preparedness that caused the main issues at the start of the pandemic.

John Swinney: We have to do both. We could do nothing to update the statute book but, if we have another pandemic, we will find ourselves having to rush through parliamentary legislation and, heaven forfend, but Mr Whittle might be one of the people who say that it is ridiculous to rush it all through in a few days. I do not rule out that possibility.

Then there are the logistical preparations for pandemics. Those are all elements that Lady Poole will look at during the public inquiry, and the Government is reviewing the preparations that we have in place for a whole range of emergencies. We regularly review the potential threats that we face and consider the degree to which we are equipped to deal with those threats. We will continue to do that for the foreseeable future.

Brian Whittle: I will push you on that. Again, I am looking back to see what an appropriate response would have been. I put it to you that we saw the pandemic coming—we watched it coming out of China and moving across the world. The fact is that we did not prepare properly or respond quickly enough. Surely that experience would change the way in which we are prepared and the measures that we put in place for the future. It would not be emergency legislation that would make the big change to outcomes.

John Swinney: The Covid virus emerged from China in the latter days of 2019 and it started to take effect in Scotland in late February to early March. There was therefore a limited window for us to put in place the arrangements that Mr Whittle envisages.

Looking back, one of the most critical elements that should be the foundation of our response is the testing infrastructure. It is absolutely critical to all that we are doing. I subscribe to the argument that we should have in place effective testing arrangements to enable us to ratchet that up to a much greater level than was the case back in the early part of 2020.

Yes, there are practical preparations that we can and should be making, but we were able to handle the pandemic only because we were able to exercise legislative control through the measures that we put in place. That was the Government recognising the scale of the threat and putting measures in place as quickly as possible.

10:15

Brian Whittle: My argument is that it took us too long. That is not a criticism of your Government or any Government in particular. I think that it took us too long to respond. As you know, we are now reviewing that response. There will be a report on that, and I suggest that that might be the time to consider how and whether we change the statute book.

John Swinney: There will be a lot of consideration of the pandemic. Lady Poole's inquiry will play a significant part in that but, obviously, we will have to wait some time before we get the conclusions of that inquiry.

I recognise that there are differences of opinion in this respect but, from my perspective, the Government could be pressed to learn the lessons of the pandemic and make sure that we have our house in order, and that is essentially what the Government has done. We have looked at our legislation and at the fact that there are gaps, and we have introduced a bill that aims to address those gaps in relation to the public health measures. At some stage, further legislative

change could be made, but that will be for the Parliament to consider in due course.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): I wish you well in your recovery, Mr Swinney—it has clearly been a tough morning for you.

I have a couple of quick questions. Why were the public health powers not included in the Public Health etc (Scotland) Bill when the legislation for England and Wales was updated to include them in 2008?

John Swinney: I am not quite following Mr Fairlie's question.

Jim Fairlie: I am sorry—I have gone right back to the convener's opening questions. Why were the public health powers not included in the Public Health etc (Scotland) Act 2008 when England and Wales already had those powers?

John Swinney: I cannot honestly say what was in the minds of ministers at that particular time. I would have to go and look at past papers to consider whether those issues had been looked at and what the purpose of that public health legislation was. I suspect that the 2008 act was reviewed to update specific issues relating to localised incidents and that it did not have the scope to look at the population-wide challenge of the nature that we have faced. That would be my first response, but I will consider the matter further and, if there is any more information that I can share with the committee, I will write to the convener accordingly.

Jim Fairlie: That would emphasise the point that we need to update our statute book.

John Swinney: It certainly would, because there is no doubt in my mind that the fact that we had to make such significant legislative change—in extremis, twice, in the spring of 2020—indicates to us that our statute book is not up to date.

Jim Fairlie: Should provisions on the process for applying special restrictions and any subsequent appeals be included in the bill? You said that you would be happy to look at the issues that Mr Fraser raised with you. Should the process for applying such restrictions be included in the bill?

John Swinney: I contend that there are adequate measures in the legislation that set out how that can be undertaken. I think that the question that the Parliament needs to consider is whether those powers are appropriate and whether they can be exercised in a proportionate and appropriate fashion. All those factors need to be considered, and I think that all of that is achieved by the terms of the bill, but if the committee or members make particular suggestions, I will, of course, engage on those questions.

Jim Fairlie: We also took evidence on mental health in relation to the named person. We are short of time, so I will quickly go through the points that have been raised.

How should people be informed about the role and responsibilities of being a named person? Is additional guidance needed on the role and responsibilities of being a named person? Should a nominee be required to declare that they understand the role, and the rights and responsibilities, of being a named person?

John Swinney: It is important that those are fully and properly understood. There is a statutory code of practice to help people to understand the role of a named person. The code states that it would be best for the mental health officer or any other practitioner to discuss the matter with the nominee to ensure that they are provided with information about the role of a named person

“in a form which is helpful to them”,

that it would be best practice to provide information to the nominee about their rights and the patient’s rights, and that the process of checking understanding is separate from the requirement for the nominated person’s consent to be witnessed. Therefore, a number of protections are in place to ensure that the concept of the role can be properly explained to, and understood by, individuals.

Jim Fairlie: I will very quickly ask about the moratorium on diligence. At the moment, the bill does not contain provision on a moratorium, but the Scottish Government has stated that amendments on that subject might be lodged at stage 2. Does the Government intend to lodge amendments on the moratorium on diligence at stage 2? If so, has the Government reached a view on how long the moratorium should last?

John Swinney: We are likely to lodge an amendment on the moratorium at stage 2. There are differing views on the appropriate moratorium period and on whether it should be permanent, so we are taking time to consider what the timescale should be. During the pandemic, a temporary moratorium of six months was put in place. In England and Wales, the period is 60 days. There are a range of views, and we are in the process of weighing up the different views and setting out the provision, which is likely to take the form of a stage 2 amendment.

Jim Fairlie: We also took evidence on digital and remote service delivery. We heard from local authority witnesses that online delivery of services had to happen at speed at the beginning of the pandemic. Mairi Millar from Glasgow City Council accepted that a lot could be done to reconfigure those services to make them more accessible. Significant work needs to be done to ensure that

remote services that were developed at speed during the pandemic meet the needs of users. Will the Scottish Government be able to make funding available to support that work?

John Swinney: There are two aspects to that question. One is about the adaptability of public services so that they can be used in the digital environment. Great improvements have been made, but there is a way to go. Ministers have been clear that we are too far behind the private sector on developments in that regard. The private sector is significantly ahead of the public sector in relation to the availability of such provision. That is one priority.

The second aspect is about ensuring that we overcome the digital divide so that people are able to use technology to gain access to public services. The connected communities initiative is making significant progress in that respect, and I welcome the steps that have been made.

Through those two channels, Scottish Government funding is available to address those questions.

Jim Fairlie: The provisions in part 3 of the bill mainly enable public service providers to offer remote services, rather than requiring them to provide them. Local authority witnesses highlighted the success of remote service delivery during the pandemic and the potential for resource savings. Will the Scottish Government consider amending the bill to include a requirement to continue to offer in-person services?

John Swinney: I will certainly consider that point. It has been interesting dealing with my constituency case load on the recent census, which, for the first time, has been predominantly undertaken digitally. Some of my constituents were concerned about not being able to do that and asked about getting paper copies. That tells me that we must be constantly mindful of the importance of ensuring that both options are available to individuals. If the bill does not have adequate safeguards in that regard, we should be prepared to consider that.

Jim Fairlie: There was also specific concern about what the option to provide remote services might mean for licence applicants. Where a meeting was to be held remotely, the emergency legislation gave applicants and objectors the right to decide how they wanted to participate. However, the bill will give licensing bodies complete discretion as to the format of hearings. Should the bill be amended to give those who are entitled to participate in hearings more of a say? I must say that, if you are in dispute, it is much harder to get your point across in remote meetings.

John Swinney: I am certainly happy to consider that. The thrust of the legislation is to ensure that we have an appropriate way of making the process more efficient and minimising disruption. In doing my constituency work over the pandemic, I have been struck by how the use of technology has significantly enhanced my ability to conveniently engage with constituents. Instead of people having to drive from Rannoch station to Blairgowrie, because that is where I happen to be that day, a Zoom call can save them a round trip of about four hours to see their member of the Scottish Parliament. To my shame, that had never dawned on me until the pandemic.

There is a desire in that part of the bill to secure the opportunities for greater efficiency and effectiveness that arise from our experience of the pandemic. I think that we should be open to doing that, but not in a way that would make the process disadvantageous to individuals. Mr Fairlie's point is that that approach might be disadvantageous to a licensing applicant.

Jim Fairlie: That is my point. I absolutely get that we can make things far more streamlined and all the rest of it, but there will be times when people want to have a sit-down conversation in a face-to-face environment. That is something that we should consider.

John Swinney: An important point to add is that it is the responsibility of licensing boards and authorities to ensure that virtual meetings and hearings are conducted in a manner that meets the accessibility and engagement requirements of attendees. Therefore, the onus is on the body to make sure that its approach can meet the needs of the licence applicant. However, if there is a need for us to make that more explicit, I am happy to consider that.

The Convener: I have a few more questions that I need to ask, Deputy First Minister. Many of the powers in the Public Health etc (Scotland) Act 2008 require an application to be made to the sheriff court in order to be applied. However, the bill does not appear to stipulate a specific process that must be followed when special restrictions and requirements, such as the requirement for a person to submit to medical examination, are applied.

In the absence of a requirement to obtain a sheriff's order, what will the process be when someone seeks to apply the special restrictions and requirements, and how will the human rights of the individual be adequately safeguarded?

10:30

John Swinney: The first point is that there can be no debate or questioning about the protection of applicants' human rights, so that must underpin

the process that is put in place. We then have to satisfy ourselves that we have in place arrangements that enable individuals to achieve proper engagement with public authorities and that assure their rights in the process.

The bill is designed to give appropriate specification on that point. If there are issues about whether sufficient specification has been given, I will be happy to consider those as part of the bill process.

The Convener: Lastly, I move on to the issue of monitoring public health risks. Section 1 inserts new section 86H into the Public Health etc (Scotland) Act 2008, which will allow the Scottish ministers to confer on bodies and persons functions in relation to the monitoring of public health risks. Will the cabinet secretary explain how he expects those powers to be used? Will the provisions support on-going preparedness for future public health threats? If so, what types of health threats could be detected by those measures?

John Swinney: There is a difference, convener. The measures to which you refer are ones to be used during the course of a pandemic. The power would enable ministers, through regulations, to put particular monitoring responsibilities on public authorities.

On the obligations for preparedness, public authorities will take forward work, as part of their routine work under existing statutory arrangements, to ensure that we are prepared for all resilience challenges that we face. We revisit those issues regularly through the Scottish resilience partnership, and we take them forward as part of the wider work that we undertake with public authorities to ensure their preparedness for such eventualities.

The Convener: That concludes our consideration of this agenda item. I thank the Deputy First Minister and his officials for their evidence.

Ministerial Statement

10:32

The Convener: Under agenda item 2, the committee will take evidence from the Scottish Government on the latest ministerial statement on Covid-19. I welcome back the Deputy First Minister and Professor Jason Leitch. Thank you for your attendance.

Deputy First Minister, would you like to make any remarks before we move to questions?

John Swinney: I would. I am grateful to the committee for the opportunity to discuss a number of matters, including updates to Parliament on Covid-19. As the First Minister set out yesterday, we are currently experiencing high numbers of cases in Scotland, and that reflects the impact of the BA.2 variant, which we know to be even more infectious than the original omicron variant.

Alongside infection levels, the high number of people in hospital with Covid, even if they were admitted for another condition, is putting the national health service under severe strain. There are, however, some grounds for optimism that the latest wave of the pandemic may now have peaked, and we will continue to assess the data closely to see whether those early signs are indeed indicative of a sustained fall in cases.

Despite the infectiousness of the BA.2 variant, vaccination continues to provide good protection against serious illness, and our programme of booster jags for certain groups is now under way. The programme started three weeks ago in older people's care homes and, from last week, appointments are being offered to everyone aged 75 and over. People with suppressed immune systems will have appointments scheduled during spring and summer. In line with the advice from the Joint Committee on Vaccination and Immunisation, vaccination of the wider five to 11-year-old age group started on 19 March and will continue over coming weeks.

Vaccination remains the most important thing that any of us can do to protect ourselves and others, and the Scottish Government is continuing to ensure that as many people as possible are vaccinated.

As I mentioned, our NHS is facing very significant pressure and, in tackling the virus, we must be attentive to its needs. For the period up until Easter, we are continuing to ask everyone to take a lateral flow test twice a week. People should take a test daily for seven days if they are a close contact of a positive case, and they should take a test before visiting someone who is vulnerable. Someone who has symptoms should

get a polymerase chain reaction—PCR—test and, if they test positive, they should isolate and follow advice from test and protect.

Using the approach set out in our revised strategic framework, and based on clinical advice, our assessment is that the virus continues to present a medium threat, although we remain optimistic that it will move to being a low threat during the spring and summer.

We have largely moved away from using legally imposed protective measures to control the virus; instead, we are relying on vaccines, treatments and sensible public health behaviours and adaptations. When most legal requirements were lifted earlier in March, we retained in law the requirement to wear face coverings on public transport and in certain indoor settings. Cabinet has now agreed to convert the legal requirement to guidance in a phased approach. From 4 April, it will no longer be a legal requirement to wear a face covering in places of worship or while attending a marriage ceremony, a civil partnership registration or a funeral service or commemorative event. From 18 April, the wider legal requirement that applies to shops, certain other indoor settings and public transport will be converted to guidance. Through guidance, we will continue to encourage the wearing of face coverings where appropriate.

I am happy to answer questions from the committee.

The Convener: With the removal of masks later this month, a lot of people, especially the clinically vulnerable, are quite anxious, especially as Covid is still prevalent. Guidance was published by the Scottish Government in January regarding the distance aware scheme. How can the Scottish Government raise more awareness of the scheme to protect our most vulnerable people as we remove the requirement for masks?

John Swinney: It is important that we continue to take actions to support those who are very vulnerable. I understand why some people want the removal of the requirement for face coverings, although I have to say that, in my own humble opinion, it is hardly the most inconvenient thing that we have ever been asked to do as citizens, and it is something that can be done to help and protect those within our society who are much more vulnerable. The Government will certainly be encouraging people to continue to wear face coverings voluntarily in appropriate locations.

The Government has spent significant amounts of time promoting the distance aware scheme. It needs to continue to be promoted, and we will do that over the course of the forthcoming period to ensure that there is as wide awareness as possible about the merits of the scheme, which is

critical in providing reassurance to and promoting understanding among members of the public.

Murdo Fraser: I have a couple of particular constituency issues that I would like to raise. A number of constituents have contacted me. They are parents of children in fifth year, who are studying for their highers in a few weeks' time. First, they are looking for an assurance that there is no prospect of the current exam diet being cancelled. We know that there are some schools with large staff absences. Also, there are constituents who are wondering what other arrangements will be in place for any pupils who contract Covid and will therefore not be able to sit their higher exams on the day required. Can you help me with that?

John Swinney: On the first question, the exam diet will go ahead—that is the approach that has been taken. On a situation where a young person is unable to sit an exam because of Covid, there are routine arrangements in place to address the implications of that on a pupil-by-pupil basis. No pupil will be disadvantaged by those arrangements, and it will be a matter of engaging with individual schools to ensure that arrangements can be put in place to support young people who might find themselves in that situation. The Scottish Qualifications Authority will work with individual schools to ensure that no pupil is disadvantaged in that respect.

Murdo Fraser: My second question is on an entirely separate matter, concerning vaccinations.

Over-75s are currently being called for their second booster. I have been contacted by someone living in the Rannoch area, which you know well. At present, residents are being directed to travel to the vaccination centre in Pitlochry, which is a substantial round trip and difficult for people who rely on public transport. Could rural GP practices be authorised to deliver vaccinations for people who have transport difficulties? Is the Scottish Government considering that?

John Swinney: The difficulty will not be solved by putting travel arrangements in place. Professor Leitch might contradict me, but I do not think that I am wrong to say that the difficulty is caused by the fact that it is the Pfizer vaccine that is being administered. The Pfizer dose comes in a larger block than other vaccines and therefore cannot be broken down for use in GP practices. That is why individuals may have to go to centres such as Pitlochry, which I appreciate is some distance for people living in the Rannoch area. I have dealt with constituency concerns about that. It is because of the nature of the vaccine. Professor Leitch may want to add to what I have said.

Professor Jason Leitch (Scottish Government): Good morning. I think that this is

the quietest that I have ever been for an hour and a quarter of a committee meeting.

The Deputy First Minister is absolutely right. Each vaccine is packaged slightly differently and has slightly different rules about freezing, cold storage and all of those things. Some GP practices are administering Covid vaccinations. That is a local decision, made by local vaccine co-ordinators and based on whatever is available in that area. It is much more efficient for delivery and the avoidance of wastage if vaccination can be done at least in medium-sized units, never mind the larger units like the Hydro in Glasgow or the Edinburgh International Conference Centre.

It is not impossible for some GPs to give vaccines. It is a workforce challenge, but also an equipment and vaccine challenge.

Alex Rowley: Mr Swinney, the last time you were at the committee I asked you about the cost of lateral flow tests. I think that there was a mix-up between what I asked and what you said. You said that they would continue to be free, but I think that you meant up to the point when they stop being given out, which will be in mid-April.

I have three questions. Will lateral flow tests continue to be available in health and social care settings?

Secondly, the Educational Institute of Scotland is campaigning to keep lateral flow tests in school for all staff and is making the argument about why that is important. Some schools are having to send year groups home; some schools have loads of kids sitting in assembly halls for part of the day. There is still a major Covid problem in schools, which particularly affects staffing. How would you respond to the EIS request that school staff should continue to have free access to lateral flow tests?

Thirdly, there is a cost of living crisis. Your ministers are already talking about people choosing between heating and eating. Buying a lateral flow test will probably fall further down that list of choices for people in that situation. Are you relaxed about that? You have said that you are optimistic that the spread of the virus will be slower in the spring and summer. What about that particular group?

John Swinney: I will address the last point first because it is a gateway to the whole question. All things being equal, I would like us to maintain a pretty significant level of lateral flow testing. That would be beneficial. It provides a lot of intelligence and assurance. However, I have to look at the hard financial realities in the wake of the United Kingdom Government's decision on what it is prepared to fund, because of its direct effect on the consequential funding that is available to the Scottish Government. Because the decision limits that funding, it is difficult for us to sustain more

than the larger proposition that we are already putting in place.

10:45

A testing environment will still be in place for health and social care staff, and it will continue to be free. As for school staff, I am obviously aware of the EIS campaign, and I am very familiar with the strength of opinion in the EIS and among school staff with regard to the importance of testing arrangements remaining in place. We are maintaining those arrangements for longer than in other parts of the UK but, unfortunately, the decisions of the UK Government are placing limitations on us.

Alex Rowley: What about the cost of living crisis? I can afford to get a test, but for many people on lower incomes, that sort of cost is just not going to be part of their budget.

John Swinney: I am very concerned about that, because it gets to the heart of the wider cost of living challenges that we will face in our society. The Scottish Government will do everything that we possibly can to maximise support for the resilience of people in our society who are facing these challenges and this hardship, but it is a significant challenge to do all those things within the financial constraints that we are operating under.

Alex Rowley: With regard to people on lower incomes, the data that I have looked at shows a stark reduction in vaccination take-up in the under-40 age group. I have to say that the situation is not unique to Scotland—it goes across the UK—but there has definitely been a stark reduction in take-up of the third dose. Likewise, when the Office for National Statistics compared vaccination take-up and free school meals data, it found a clear correlation between lower socioeconomic status, deprivation and poverty and vaccination uptake, particularly with regard to the third dose. That was in England, but there is no reason why the same should not apply to Scotland. Have you found that to be the case? Does the Scottish Government need to consider further action to encourage vaccination uptake, particularly in those areas and amongst those groups where it is lowest?

John Swinney: Given the centrality of vaccination as the most effective protection against the virus, we are constantly looking at ways of intensifying the focus on vaccination uptake. The vaccination programme, as a whole, has been phenomenally successful in reaching high levels of uptake, but that very strong national position masks a not-so-strong position in some categories, groups and geographical areas.

We are therefore constantly looking for practical ways of ensuring that vaccination take-up is more

accessible through, for example, our public campaigns and the availability of accessible and convenient venues. In my own locality, NHS Tayside has gone to considerable lengths to try to find locations and areas where it can boost vaccination uptake, and some of the areas in question are exactly those that Mr Rowley has highlighted to me. It has had some success in that respect, but we must continue to pursue that approach to ensure that we maximise vaccination uptake. After all, it is the biggest protection that individuals can get.

Jim Fairlie: Mr Swinney, I hope that you will get a wee rest on this question, because I am targeting it to Jason Leitch.

We spoke before about a constituent of mine who is very concerned about getting the vaccine. She is going through various medical issues because of cancer. She had an adverse reaction to a flu jab, and she is very concerned about getting any form of vaccine that has to do with coronavirus. There are still venues that require a vaccine passport, which she will obviously not be able to get. She has put to me that there is a panel of four people who decide what the exemptions should be, but she will not be allowed to give her own voice on the issue that she has. Is she correct that there is a panel of four people who make that decision? What are the criteria for not getting the vaccine? Can anything be done to allow her to have her voice heard so that she can put her point across?

Jason Leitch: First, my advice is to get the vaccine. I advise her to go to a vaccination centre and have that conversation with the senior member of the vaccination team—that might not be the first person she meets in the vaccination team; it might have to be escalated up through the process. She should have a very serious conversation, and make sure that that is absolutely the decision that she wants to make. She should understand the implications of getting the vaccine, but she should also equally understand the implications of not getting it—not only the fact that she probably will not be able to go to a London theatre for a little while, but the implications of catching the disease, particularly if she is immunocompromised because of cancer care. That strikes me, with the limited knowledge that I have of this case, as a much higher risk than that which is involved in getting the vaccine. That is point number 1—she should go and talk about getting the vaccine.

Point number 2 is that the exemptions are fairly limited for a very good reason. There are very few diseases or conditions that contradict getting the vaccine, simply because the vaccine is safe, and it is safe in almost everybody. I imagine that this constituent does not fit into one of those

categories. She can, of course, ask, and she can make her case.

I have no knowledge that there are four people in a quiet room somewhere making individual decisions about people's lives—that is not the system that I am familiar with. What we have done is categorise the individuals who are at highest risk from the vaccine, including people who have an absolute, confirmed allergy to the constituents of the vaccine—we will not vaccinate them. There are also people receiving end-of-life care—they have unfortunately had that very bad news, and the vaccine is therefore inappropriate for them—and there are some people with some immunosuppression diseases in whom the vaccine is contraindicated, but that is a very small group.

I am afraid that exemption is not something that someone can just request and get. However, if you want to send in the details of that case, we will absolutely get the individuals involved to look at it and make sure that all that has been done is appropriate.

To go back to my initial point, vaccination is safer than Covid.

Jim Fairlie: My final point is one that has been raised again and again with me by the same constituent. Apparently, somewhere in the media or on television, Professor Linda Bauld made the statement that, if you have an adverse reaction to the flu jab, you should not get the Covid jab. I do not know whether that is verified, but it is a position that keeps being put to me. Is it correct?

Jason Leitch: It is not blanket correct. Linda Bauld certainly might have said that in the context of some specific question, but I imagine that her advice would be the same as mine: go and discuss your case with a senior vaccinator who understands your challenge—because we are not forcing anybody to get the vaccine—the disease of Covid and the risk or otherwise of having the vaccination.

An allergic adverse reaction to flu vaccine is very different from a side effect from the flu vaccine. We would need to understand exactly what happened and exactly which vaccine it was, and then we could make some choices about which vaccine, if any, to suggest for Covid.

Jim Fairlie: That is grand. Thank you very much.

Brian Whittle: I want to go back to education. I have a vested interest in the issue, given that one of my daughters is a teacher and another of my daughters is a pupil who transitioned from primary 7 during Covid and is now in second year. She has missed significant classroom time throughout the whole Covid experience. Despite the greatest

efforts of teachers, for many pupils, online learning does not replace learning face to face. How does the Scottish Government propose to fill that gap in learning?

John Swinney: During my time as education secretary, I listened to a significant number of experienced educators who were keen to ensure that we did not disparage online learning, because there is a really strong place for online and digital learning for young people in our education system. Digital learning broadens choice and deepens the opportunities for understanding and appreciation of subjects, and many educationalists have been trying to make advances with it for a considerable time. Therefore, I think that it is a really important asset for us.

Ironically, by merit of the involvement of teachers around the country during the pandemic and measures such as the e-Sgoil and the west of Scotland learning partnership, a strong digital learning proposition is now available to young people in Scotland that they can dip into in their own time. A whole range of examples of digital learning have been taken forward by individual schools. We should celebrate that.

My second point relates to the impact of the pandemic on young people's learning. Individual schools are concentrating on making sure that the needs of young people are met through the education system and that they can secure the necessary engagement in their learning, and a variety of approaches have been taken to ensure that that is the case.

Obviously, there will be an impact on learning as a consequence of the pandemic—that is an inevitability of the disruption to the education system. However, teachers are working hard to ensure that the impact on young people is minimised where possible.

Brian Whittle: I just note that I did not talk about all pupils—I said “many”. One issue that has been raised is that, for some people, the pandemic has deepened inequality in learning. There should perhaps be a focus on certain sections of society and pupils. However, thank you for that response, which was helpful.

I will transition to a point that has been raised with me and that relates to health. We know that roughly half of the Covid cases in hospital are patients who went in for another condition. The worry that has been raised with me is that there is still a reluctance among people to seek medical help because they are concerned about contracting Covid in hospital. What is the Scottish Government doing to ensure that that hesitation is overcome and to get people to seek critical medical help as soon as it is required? If people

do not do so, that will put strain on the NHS due to later presentations.

John Swinney: I will invite Professor Leitch to add to my remarks in a moment. It is important that people present for healthcare in the appropriate context and at the appropriate time. For some people, that will mean presenting very early when they have emerging symptoms of a potentially acute and challenging condition. Throughout the pandemic, we have maintained cancer care, and the message has been that the health service remains open for people should they require it. However, I accept that that does not fully address the reluctance that Mr Whittle mentions. I think that people are nervous about going to hospital because of the risk of contracting Covid.

Fundamentally, the matter can be addressed only by the forum in which we deliver healthcare. It is about ensuring that we meet each individual's needs in their own communities as much as we possibly can. Measures such as hospital at home are designed to ensure that we provide care literally as close to home as we possibly can for individuals.

Professor Leitch might want to add to what I have said.

11:00

Jason Leitch: It is a crucial issue, Mr Whittle, as we have discussed before. We need to be slightly careful. There are three categories of positive patients in hospital. There are people who are in hospital principally because they are suffering from Covid. There are some who are in hospital with other conditions who brought Covid with them. On admission, they were tested and were positive but they have had a stroke or heart attack or broken their leg, for instance, and Covid will almost universally make their recovery harder. There is a third group who catch Covid in hospital from staff members or patients in the environment who have the virus. That is a small group and people should not be scared about going to healthcare because they might catch Covid. That is not a reason not to go.

It is relatively unusual that hospital would be somebody's first port of call with signs or symptoms of disease. Of course, there are some times when that is appropriate, such as when somebody is an emergency patient and taken by ambulance. However, the health service does not work like that. It works by people going to their pharmacy, their dentist, their GP, NHS Inform or NHS 24. Those systems remain open and accessible. Of course, there are challenges in some places, on some days and at some hours, but that is the way into the health service with

whatever is troubling the individual. After that, hospitals become part of their care if and when required.

John Mason: I welcome the fact that we will not have to wear masks in churches and other places of worship as of Monday. The idea of gradually reducing the requirement for masks is sensible.

My question follows on from what Professor Leitch just said about the three categories. We have 2,300 people in hospital with Covid who span those categories, as I understand it. Is it possible to break down how many people are in hospital because of Covid and how many would have been in hospital anyway but have Covid as well?

Jason Leitch: It is partly possible. In most developed countries, at this point in their omicron wave—I know that this is not a particularly satisfactory piece of analysis—it is about 50:50, 60:40 or 40:60. However, let us say for the sake of argument that it is about half and half. Half have serious problems with Covid and have been admitted for it. The other half, approximately, are worse because of Covid but would probably have been in hospital pre-pandemic with a stroke, heart attack or something else.

As I have said many times in the committee, I wish that healthcare were as binary as that. It is not. Most people do not end up in hospital with one thing. They end up in hospital with delirium, dementia, a hip replacement and Covid, for example. It is not as neat as one or the other.

There is a small number—I do not have it to hand—of healthcare-acquired infections of Covid, but it is nothing like half or 40 per cent of those big numbers. The first two categories occupy the vast majority and then there is a small number of people who, although we can never be absolutely sure, appear to have caught Covid during their hospital stay because they have been in hospital for a long period. Again, that usually makes their recovery more complicated, because it makes healing and recovery more difficult in pretty much every disease.

John Mason: That is very helpful.

Murdo Fraser: I would like some clarification on an issue that has been discussed over the past day in relation to education. Following yesterday's announcement about lifting the requirement to wear face masks from 18 April, there seems to be some confusion about what situation will apply in schools, where face masks are still being worn in communal areas. Yesterday, a Scottish Government spokesman said that face coverings would still

"be required in communal areas for staff and secondary school pupils"

after 18 April, but that seems to have been reined back on this morning. Will you clarify exactly what the position is, Deputy First Minister?

John Swinney: I understand that the position is that masks will not be obligatory in communal areas but that wearing them will be recommended as beneficial for maintaining some protection.

The Convener: That concludes our consideration of this agenda item. I thank the Deputy First Minister for attending despite being ill. We wish him a speedy recovery. I also thank all the supporting officials for attending.

The committee's next meeting will be on 21 April, when we will consider our stage 1 report on the Coronavirus (Recovery and Reform) (Scotland) Bill in private.

That concludes the public part of our meeting.

11:06

Meeting continued in private until 11:27.

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