

Public Administration and Constitutional Affairs Committee

Oral evidence: [Responding to Covid-19 and the Coronavirus Act 2020, HC 377](#)

Tuesday 23 June 2020

Ordered by the House of Commons to be published on 23 June 2020.

[Watch the meeting](#)

Members present: Mr William Wragg (Chair); Ronnie Cowan; Jackie Doyle-Price; Rachel Hopkins; Mr David Jones; David Mundell; Tom Randall; Lloyd Russell-Moyle; Karin Smyth.

Questions 61 – 109

Witnesses

I: Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs; Jeremy Miles MS, Counsel General and Minister for European Transition; and Gordon Lyons MLA, Junior Minister, Executive Office.

Examination of witnesses

Witnesses: Michael Russell, Jeremy Miles and Gordon Lyons.

Q61 **Chair:** Good morning, and welcome to another virtual meeting of the Public Administration and Constitutional Affairs Committee. I am here in a Committee Room in Portcullis House with a small number of the team required to facilitate the meeting, obviously suitably socially distanced. Our witnesses and members of the Committee join us from their homes and offices around the UK. The Committee is particularly grateful to all the witnesses for making time to appear before us today.

I ask the panel to introduce themselves for the record, please.

Michael Russell: I am Mike Russell. I am the Cabinet Secretary for the Constitution, Europe and External Affairs in the Scottish Government. I am also the Member of the Scottish Parliament for Argyll and Bute. I am sitting here on a very wet morning in rural Glendaruel in Argyll.

Jeremy Miles: Good morning. I am Jeremy Miles, I am Counsel General and Minister for European Transition in the Welsh Government and the Member of the Senedd for Neath.



Gordon Lyons: I am Gordon Lyons, the Junior Minister to the First Minister in the Executive Office in the Northern Ireland Executive, and I am the Democratic Unionist Member for East Antrim in the Northern Ireland Assembly.

Q62 **Chair:** Following the order of introduction, may I put a broad question to all three of you, please? When did you first become aware of the threat of Covid-19, and what action did your Government take prior to the Cobra meeting of 2 March?

Michael Russell: I think, like all of us, the Government were generally aware of the issue of Covid and, of course, there was the notification from the WHO on, I think, 31 December in terms of the events in Wuhan. A range of things that took place between then and 23 March, which was of course the start of the lockdown.

Calls between the four nations, arranged by the UK Department of Health and Social Care, started on 20 January. SAGE started to meet on 22 January. Cobra met on 24 January in ministerial form, and in official form a few days later. The Scottish Cabinet first discussed the pandemic on 28 January. Our Resilience Room, which is our equivalent of Cobra, was activated on 29 January. From then on there was a mounting series of meetings and events between the four nations and internally. We have our own structure in the Scottish Government Resilience Room that has met regularly since then. The Cabinet, of course, has met regularly and there have been other groupings and subgroupings.

Of course the structure of co-ordination and discussion has also developed. SAGE has been one of those. With representatives from SAGE, we established our own scientific group early in March, and that has been deeply involved in giving us advice because health and a number of other matters are fully devolved.

In terms of working together, the publication of the four nations Covid Action Plan on 3 March was a significant moment. Before that, in the middle of February—I know you have been looking at the emergence of legislation, and I have taken responsibility in the Cabinet for legislation and regulation in Scotland—work was done, as you know, on the Pandemic Flu Bill and that converted into work on what turned out to be the Covid Bill. The first draft print of that was around 19 February, so legislative activity was getting underway at that stage. Of course we took through the LCM, the Legislative Consent Motion, on the UK Bill—if my memory serves me correctly—at the end of March, just after the lockdown. We have since passed two Bills, plus a whole raft of regulations.

That is an overview of the timeline. There is, of course, a more detailed timeline that we could discuss in terms of what meetings were held and what was discussed at those meetings, but I think that gives you the breadth of where we were.

Q63 **Chair:** Yes, it is a useful overview. Could I ask for the perspective of Wales,



please?

Jeremy Miles: I will not repeat the intergovernmental activities that Mike has just outlined. In addition to those, from early January, the virus having been identified at the end of December, Public Health Wales was meeting daily as part of the UK incident management team. We, as the Welsh Government, had a representative on SAGE from 1 February. During February we also established our internal response structures in our health and social services group, as well as our civil contingencies and resilience activities.

In terms of our standing emergency arrangements, the Emergency Co-Ordination Centre has been in operation throughout and continues to help co-ordinate our response. The Welsh First Minister established a Cabinet Covid group that meets each Wednesday to consider developments.

In terms of the legislative activity, I echo the points that Mike has made. In the days before lockdown we introduced some regulations that were subsequently subsumed in the following regulations, the public health legislation and the work on the Coronavirus Act.

That is, again, an overview. I am happy to provide a timeline.

Q64 **Chair:** That is all right, we will be exploring the issues as we go through. Could I ask for the experience of Northern Ireland, please?

Gordon Lyons: The Northern Ireland Executive was reformed on 11 January, so we were not in post too long before we had to start to deal with this pandemic. At one of the first meetings of the newly-formed Executive, the Minister of Health raised this as a potential issue that would reach our shores. It was clear by the end of January that we needed to have robust measures in place. The Department of Health triggered its emergency response plan and set up its emergency operations centre on 27 January to manage the incident. That was enhanced by increasing local capability for testing for the virus, and there was a comprehensive programme of testing and contact tracing during the containment phase of the pandemic. There was also an effort by the Northern Ireland Executive to increase public awareness, and there was a campaign around that.

We stood up our civil contingencies group on 12 March. That is a group that exists here in Northern Ireland, chaired by the head of the civil service, with input from senior Ministers and representatives of each Government Department and key agencies associated with the Northern Ireland Executive. It was its job to look at what steps needed to be taken to manage the virus, and that continued throughout the pandemic. Of course then, as others have mentioned, there is the four-nations approach. Ministers were also involved in the first Cobra meeting on 2 March.

Q65 **Chair:** It is very helpful that you ended your remarks by mentioning the four-nations approach. Could I ask all three of you—very briefly if you would, in a sentence or two—what consideration was being given at that point, on 2 March, to taking decisions at different times in different parts



of the United Kingdom? What consideration were your Administrations giving to that prospect?

Michael Russell: The decision is always, because the health service is fully devolved, to operate it to the best of our ability and to make the right decisions for that health service and for the people of Scotland. I do not think it is a question of willingly disassociating but of making the right decisions. If it is possible to make those decisions in lockstep, and if it is beneficial to make those decisions together, that is what should have happened in these circumstances and that is where we were, but with the freedom to do what is required. We will see that later when we talk about the legislation, as people have operated parts of the legislation in different ways and have chosen not to operate things.

Both Jeremy and I represent our Parliaments and our Governments in the Brexit process, which has been considerably less happy and together than this process, and it has been a question of making sure there was added value in working together and that we could support each other, learn from each other and do the right things together. However, it is doing the right things that counts, rather than anything else.

Jeremy Miles: From our point of view, as a Government, a four-nations approach probably means doing broadly similar things in broadly similar circumstances, rather than necessarily exactly the same thing at exactly the same time. Certainly in the early stages we had regular contact as four Governments across the UK, and Cobra provided a good opportunity for Ministers to discuss and reach judgments together. Therefore, I would characterise the early stage of involvement as being one that gave a common platform for action.

To echo the point Mike made, in the Welsh context specifically, it is never a question of, as it were, deviation from the norm; it is a question of applying the advice to the circumstances that pertain in Wales. Clearly there was later more divergence, and I think there are good reasons for that. However, certainly in the early stages, there was a high level of co-ordination going into the lockdown in particular, and I think there were high levels of co-ordination and similar action across the UK.

Gordon Lyons: We are of a similar vein to the other devolved Administrations on this. We obviously want to make sure that we make decisions at the right time that are best for our people here in Northern Ireland. At the start, there was certainly a lot of collaboration, a lot of doing things at the same time. Obviously the nationwide lockdown came in on 23 March, which was similar across the whole United Kingdom. However, I think it has been right that we and the other devolved Administrations have had the flexibility to do our own things, depending on our individual circumstances.

Obviously our Chief Scientific Adviser and Chief Medical Officer are part of SAGE, and there are good working relationships between the two different scientific bodies. That has been useful, especially at the start as that



information spread through. However, we are very much guided by what we believe is in the best interests of our people. That does not mean others are doing things that are not in the best interests of their people, but it comes down to timing and the particular circumstances that we each have.

Q66 Ronnie Cowan: Good morning to all the witnesses. Mike has already touched on this, but what powers do you actually have within your Parliaments, within your Executives, to make health decisions? How does that align within the hierarchy of Governments and Parliaments?

Michael Russell: That is a very good question. I am unfortunately old enough to have been in at the establishment of devolution, and it is quite important to understand what devolution is and is not. Devolution is not about a hierarchy of Governments; it is about a hierarchy of Parliaments. The Westminster Parliament regards itself as sovereign—we will not have that debate just now—and the other Parliaments as not sovereign. The legislation gives specific responsibilities to specific devolved Administrations. In our case that is done by means of excluding a number of items, and everything else is devolved. The issues of health, public health and the running of the health service are a wholly devolved matter, and therefore the decisions on running the health service are made in Scotland. That is not new. Even before devolution, there was a Scottish national health service that operated in a different way. The Scottish legal system is different. I am a former Education Secretary, and the education system is different. Therefore, there is a range of things and a range of devolved responsibilities. Those can be overruled by the UK Parliament. Indeed, the operation of the legislative consent process has been difficult as a result of the Brexit process. However, it is not a question of overruling, for example, the Health Minister by the Health Minister in the UK, which is not possible except if the Health Minister goes to the UK Parliament and says, "We want to do this, and we are going to say it is not the decision of the Scottish Government."

It is a question of those things operating together. This is often a difficult process, and there are issues. You may want to talk later about the intergovernmental review and the fact those mechanisms have atrophied, were never very effective and are very poor now. However, in terms of the operation of devolution, which has been happening now for more than 20 years, it is entirely clear; there are fully devolved areas, there are some areas on which there is some joint activity and there are fully reserved areas. Within that rather messy practicum operating health, for example, is a fully devolved area and that is what took place.

A range of other things came along with Covid and, when we talk about legislation, we have legislated in some of those areas. I can use lots of examples, but one would be in the area of housing. We did some legislation in our first Covid Bill, and indeed in our second Covid Bill, on those matters, too.

Jeremy Miles: There is a distinction to be drawn between legislative devolution and the transfer of Executive power. In relation to health and



HOUSE OF COMMONS

public health, Executive power in Wales lies with Welsh Ministers. That is at the heart of the need, as it were, to operate on a basis where the four Governments come together, where Executive power lies in different parts of the UK, in order for there to be high levels of collaboration. That tells you something about a pattern of working, which ought to exist anyway, that reflects a parity of participation and esteem between Governments and also in terms of the structures.

In other contexts, we, as the Government, have argued for significant reform of the Joint Ministerial Committee, for example. It is notable that that has not played any part at all in the response to Covid. My own submission is that that is effectively a tacit admission that it requires significant reform. I think a set of institutions that have at their heart that level of parity between the Governments is essential.

Cobra and the important fora that have been able to support productive working are still not designed in that way. They are essentially UK Government fora to which the devolved Governments have been invited. That has enabled collaboration, but they have not been designed in a way that reflects the parity of Executive power in devolved areas across the UK.

Gordon Lyons: Health is obviously an entirely devolved matter here in Northern Ireland as well, and the Minister of Health has full authority in those matters. What may be a little bit different here is that, because of the nature of our five-party coalition in Northern Ireland, the Minister of Health has decided to take some decision-making powers back to the Executive, so we work together as an entire Government to help set policy in some areas that would perhaps normally be reserved for the Minister of Health.

Certainly there have been huge levels of engagement—we may touch on this later—with the UK Government over the last number of months, and with other devolved Administrations as well. We have found that very helpful, so we have that ability to consult and get advice where appropriate from other Governments while, at the same time, being able to take the decisions that suit us best here.

Q67 **Mr David Jones:** We have already touched on this briefly, but could each of you explain how your respective Administrations obtain expert advice on Covid-19?

Jeremy Miles: As I indicated, from 1 February there has been Welsh Government representation on SAGE. The Government receive a range of scientific and technical information, including from SAGE. We have also established a technical advisory cell supported by a technical advisory group. Its function is effectively to interpret SAGE, Cobra and other outputs, to commission models and to operate as a channel for communication of questions and queries from the Welsh Government to SAGE, and it helps to interpret that for Welsh Ministers. It receives the scientific and medical advice through that channel. It has a range of subgroups that are designed to focus on particular areas, and they then



feed, together with the SAGE advice, through TAC. We publish in the public domain weekly reports from TAC that provide information about the scientific and medical basis on which decisions are taken.

Q68 Mr David Jones: For clarification, you mentioned that you have a representative on SAGE. Do you receive all the SAGE advice that the United Kingdom Government receive?

Jeremy Miles: I do not know the answer to that question specifically, but it comes through TAC to Welsh Ministers, having been interpreted in the Welsh context.

Michael Russell: Mr Jones, nice to see you again. As Jeremy has indicated, this is complex and there is a web of relationships. You start with the Chief Medical Officer. Our Chief Medical Officer, Gregor Smith, is a member of SAGE, attends SAGE and works with the range of Chief Medical Officers. There are a lot of relationships in this that mesh together. SAGE operates, of course, through a number of subcommittees, expert groups; the New and Emerging Respiratory Virus Threats Advisory Group, the Scientific Pandemic Influenza Group on Modelling, the independent Scientific Pandemic Influenza Group on Behaviour and the Covid-19 Clinical Information Network.

Now, we have our own advisory group chaired by Professor Andrew Morris, who is professor of medicine at the University of Edinburgh and the director of Health Data Research UK. He is a member of SAGE, so he cuts across. In actual fact, there are a number of other members of his group, who are academics and experts in Scotland, who are also members either of SAGE or of the advisory groups. Therefore, like Jeremy, I cannot say that every item of advice from SAGE comes formally to the Scottish Government but, given those relationships and interrelationships, obviously what SAGE does and how it considers things feeds through into the Scottish group.

The Scottish group is time limited and has a very clear remit of what it has to do. It is designed to support Scottish Ministers and their clinical advisers. It interprets SAGE emerging scientific evidence in the context of Scotland. Every pandemic is different, not just in Scotland but at other levels too. It brings the relevant expertise, particularly in public health and a range of other things—behavioural science is really important, as you all know. It informs the NHS and social care mobilisation and planning guidance, which is extremely important. It fields information and answers questions. I have not been to many of its briefings, but I have been to some meetings that have been immensely valuable in terms of the briefing given to Ministers, and others who are required to have answers. It supports the work of the Chief Statistician—obviously data and statistics are important here—and it also develops links with other agencies and other bodies. The four CMOs have been working together. Many of the academics know each other, and the academic world is not necessarily small but it is interconnected.

All those things give a rich web of information, and the decisions being made by the Scottish Government take account of all that. However, at the



end, those decisions are made by politicians. Just as in the UK, Scotland, Wales and Northern Ireland, the decisions are made by politicians having the best advice and information, particularly for the circumstances. Within the context of the global pandemic, too, many of these people are well connected in terms of the world, and they have an understanding of what is taking place.

As External Affairs Minister, for example, I task the people working with me to bring some of that information to the table so we understand what is taking place elsewhere. That has been particularly important in terms of the easing of lockdown and learning from a whole range of places about how that might take place. I think we would all agree, whatever else we differ on, that although it is not easy to go into lockdown, it is very difficult to come out of lockdown. Getting that experience from across the world is very helpful.

Gordon Lyons: It is a similar picture here in Northern Ireland. The Chief Scientific Adviser is a member of SAGE and, additionally, the Chief Medical Officer participates in calls with other CMOs. We also have membership of various SAGE subgroups as well, as Mike has already mentioned.

Perhaps something that is a little bit different because of our circumstances here is that we have regular engagement with our neighbours in the Republic of Ireland. We signed a memorandum of understanding that formalised long-term co-operation between North and South, which brought in an additional perspective that has been useful.

Additionally, the Chief Medical Officer and the Chief Scientific Adviser both join Executive meetings, and Ministers will directly question them on issues such as the easing of lockdown restrictions. That has been very, very useful. Members of the Executive can ask specific questions, which has been very important as we take decisions. Mike is absolutely right, obviously advisers advise but it is the politicians who have to make the decisions. It has been very useful to have them there so we can question them directly on those matters.

Q69 **David Mundell:** My question is principally for you, Mr Russell, but the others should feel free to answer. In your previous answer you acknowledged that Scotland has two Governments. Of course Covid is not entirely a health issue, there are lots of other ramifications. Do you not think it would be useful for collaboration and working together that, just as the Scottish Government and the other bodies are part of the Cobra process, the UK Government were part of your Resilience Room process?

Michael Russell: I can see no objection to that, particularly on the issues that affect the UK Government, when these decisions are being discussed. There have been issues getting the full picture—as you well know, because you and I have often discussed it—and, in terms of having the full picture, perhaps there are occasions on which that would be encouraged.



I should say that your successor as Secretary of State for Scotland has been involved in discussing a range of these issues with Jeane Freeman, the Health Secretary. There has been exchange of information and, of course, he will be informed by his own colleagues in the UK Government. Clearly he is within the web of information, and it may be a different web, but there will be strands in that web—I do not want to take this metaphor too far—that will involve him and will involve ourselves. I do not think there is any desire not to have him involved and not to have him discussing things. That was the case when you were Secretary of State, and I am sure it is the case now.

Q70 David Mundell: You set out the complex process, which you acknowledge, in relation to which Ministers in the Scottish Government and the devolved Administrations receive advice. Do you think that process is good enough? The First Minister herself acknowledged that nobody had ever told her that moving asymptomatic patients from hospitals to care homes could, in fact, increase the threat of the spread of the disease in care homes. Obviously we want to see further inquiries but, self-evidently, it appears to have led to that very large number of care home deaths in Scotland.

Michael Russell: Of course any death is immensely sad and immensely regrettable. There have been care home deaths in Scotland, in Wales, in Northern Ireland and in England, far too many—far too many—and I think we have all accepted that. However, the advice that appears to have been given—certainly during the early parts of this process—was exactly the same right across the UK, which was the way in which that matter moved on transferring patients. Now, there will be, no doubt, an opportunity in time to consider why that advice was given.

One of the things I have learned in the last three months, which is important—I remember the chair of our scientific group saying this very firmly at one stage—is that we have all learned during this process. The most distinguished scientists who have advised have all learned during this process, because none of us has been in anything like this before. As the First Minister said at the very outset and has said since, inevitably things will not be perfect, and of course everybody will regret that, but everything changes and continues to change. We are going to see that, I expect, later today if the Prime Minister makes a statement about further issues in lockdown. There will be changes, we will learn and we will all benefit from that.

This has been a horrible time in many circumstances, and nobody would stand up and say everything was done in exactly the way we would want to have seen it done, which applies to every single one of us on this Zoom call and right across every Government and in every advisory group. However, I do think people have worked hard and have worked to the best of their ability, and they continue to do so.

Q71 David Mundell: I will ask you one further question, Mr Russell, and then I will ask the equivalent question of Mr Miles and Mr Lyons, to understand how, on the basis of the advice, different decisions are reached. Obviously



HOUSE OF COMMONS

I am more familiar with the situation in Scotland, living there. The issue I am most interested in, because this was a significant difference from the start in Scotland, is the operation of the construction industry.

From the point of lockdown, the construction industry has essentially not operated, other than in emergency circumstances, in Scotland compared with England, for example, where it generally has operated. What was the process was for reaching that decision? Was that decision based on advice from your advisers that it was not appropriate for the construction industry in Scotland to operate or, as you suggested in relation to other decisions, were they essentially political decisions for Ministers to make?

Michael Russell: I didn't say they were political decisions for Ministers to make; they were decisions made by politicians, which is a slight difference of emphasis that is reasonably important in this discussion.

I was not present at the instant that decision was made. However, my understanding is that the advice the Scottish Government had about the possibility of operating the construction industry in a safe way, which did not contribute to community spread of the virus, was that it was not regarded as possible. As a result, the decision was made that it should not take place except on works of national infrastructure, as you know, and those works continued.

Chair: I am terribly sorry to interrupt, but we need to keep the pace going. David Mundell, could you kindly finish your question, please.

Q72 **David Mundell:** Yes. Who decided that it was not possible?

Michael Russell: That would be a decision made by the First Minister and essentially the Government, presumably by the First Minister with her advisers. That was based on the advice she had.

Q73 **David Mundell:** Mr Miles, you have had a number of differences as well. What was the process for reaching these decisions where different processes came into play?

Jeremy Miles: The first point is that all four Governments have had differences. It is not a question of differing from one particular starting point. Each Government have taken different decisions in different contexts, although I would contend the thrust has been very much in the same direction.

It is important that the public do not get the impression that scientific advice operates as some kind of algorithm, as it were, with a fixed set of outcomes in all circumstances. It is the task of us as politicians to engage with that, and to apply our judgment and the scientific advice to the evidence and the circumstances in each part of the UK. That is what has led to the differences, where they exist. For example, in coming out of lockdown, we are all looking at the headroom we have in the transmission rate. Now, different easements will contribute different levels of risk to the transmission of the virus in the community. Therefore, it is a task of evaluating what those impacts are and working out their aggregate effect.



HOUSE OF COMMONS

There is a range of choices to be made in that context that come from the same scientific base. It is the task of Ministers to make those judgments and to be accountable for them, obviously based on that scientific foundation.

Gordon Lyons: At the beginning of the pandemic when the original coronavirus regulations were brought in here in Northern Ireland by the Department of Health, those were based largely on the English regulations. However, we did tweak them to suit some of our particular needs here in Northern Ireland.

As we have moved through and relaxed our restrictions, we have based that on three issues: the scientific and medical evidence, including the R number; the capacity of our health services to cope; and, finally, the wider effects that the regulations are having on, for example, the economy and people's mental health. As we move forward, we have to see how any proposed relaxation is going to affect those three things, which have to be taken together.

It is also important to note that our circumstances here are slightly different in terms of population density, which seems to be an issue in the spread of the disease. We were also probably a couple of weeks behind the rest of the UK in the transmission of the virus at the point the lockdown came, so we were probably protected and shielded a little bit more from that. Obviously our circumstances are different, and that is the basis on which we make relaxations or changes.

Q74 **Karin Smyth:** Mr Lyons, we know that the Regulation and Quality Improvement Authority Board in Northern Ireland, which is the independent regulatory body, has resigned in total. What process, whereby the Executive or the Department of Health would change the priorities of that regulatory body, would cause them to do that given the number of deaths in care homes in Northern Ireland?

Gordon Lyons: This is an emerging issue over the last 12 to 24 hours. It is a matter for the Department of Health. It is not within my departmental responsibilities, so I am not able to provide you further clarity on that at the moment. The Executive have not met since that took place. Obviously it is a very serious issue, and we will be having conversations with the Department of Health and with the Minister on that. It is important that we listen to the concerns of those involved.

Care homes have been an incredibly difficult issue, which I think is true right across the whole of the UK. As Mr Russell has already said, all deaths are tragedies and bring a lot of pain and suffering to families. We certainly want to make sure that we get to the bottom of this issue and that we listen to the list of concerns. I am more than happy to come back to the Member on that once we have established further information.

Karin Smyth: Thank you. We are all learning. With independent regulatory bodies, there is a judgment about resources, capacity and how decisions



are made that can be shared across, so the learning from it would be helpful.

Q75 **Ronnie Cowan:** Which intergovernmental structures are actively being used to co-ordinate the UK-wide Covid-19 response? Are these new structures, or were they in place before the Covid-19 crisis?

Michael Russell: As Jeremy has indicated, the JMC structure that has existed since the start of devolution was not used. I think that was a wise decision. There are only two functioning parts of the JMC structure, the European negotiations part and the plenary. The plenary has not met since December 2018 and the European negotiations part is not working effectively. It was a sensible and telling decision that all Governments came to on looking for new structures.

The ministerial implementation group structure was good. I think we all regret that it suddenly came to an end without consultation with the other Administrations. Nothing has been put in its place that actually brings people together. The devolved Administrations were not, as of right, part of all the MIGs, the four MIGs, but they were a part of those Committees when it mattered. Indeed, on the daily one chaired by Michael Gove there was a range of Ministers who attended for a range of different reasons. I went there to talk about regulations, and there were others who went along for other reasons. Cobra is clearly useful, and again it has not met recently. There was a four-nations communications call every day, which came to an end in early June and that is to be regretted.

We are probably in a bit of a limbo at the present moment. There appears to be an emerging structure. I know Michael Gove, for example, has been on the phone to the First Minister on a number of occasions. I think, however, the formalised structures that people operated as of right and in which they worked as equals were effective. That is when these things work best in devolution, if everybody sits around the table and has the opportunity to contribute and nobody has a veto. I know one of the objections is that devolved Administrations cannot have a veto; nobody can, everybody works together.

Those structures were helpful. I am sorry they have been disbanded. That is also one of the problems, there should be co-ownership of the structures. If they are going to be effective, they have to be owned by all the people taking part in them and it appeared those could be lifted and laid by the UK Government without any further consultation. I regret that because some of those were working well.

The Ministers are still talking. The Economy Ministers are talking. If we understand, there is to be an attempt to look again at the intergovernmental review, which has completely stalled. That may be based on quadrilaterals as much as anything, with Ministers working together. Some of that will also be in the framework process that is still part of the Brexit process.



HOUSE OF COMMONS

Gordon Lyons: I think Mike is right, the JMC would not have been the appropriate way to deal with this. I found the ministerial implementation groups very helpful. On behalf of the Executive, I was on those daily calls at 1 pm throughout most of April and May. They have come to an end. They were useful for the purposes of information sharing more than anything else. I think what we have found particularly helpful is the access we have had to UK Government Ministers on an ad hoc basis, as and when required—the door has always been open. I know most of our Ministers have had the access they need to their counterparts, which is certainly the case for the Economy Ministers and the Health Ministers in particular. The Agriculture Minister has also expressed how useful it is, the engagement they have had so far.

For us, the most helpful of all has been the attitude and the work of the Secretary of State for Northern Ireland. Brandon Lewis has had regular, sometimes daily, calls with Executive Ministers here. He has kept in touch with us on a UK-Northern Ireland basis, and also with our neighbours in the Republic of Ireland. That level of access has been very, very useful.

In addition, it has been helpful that we have been kept informed of the potential changes that might be coming in terms of the relaxation of restrictions and changes to regulations. Unfortunately, we did not always have that from our neighbours in the Republic of Ireland, and often we were blindsided and given no prior notice of some of the changes that were taking place there.

I also want to commend Nigel Adams in the Foreign Office. We had a number of questions early on about the repatriation of UK citizens abroad and, for a number of weeks in a row, Mr Adams was very good at keeping us informed and having that regular engagement.

Formal structures might not always have been as they were or maybe were not in place but, certainly as the Executive, we feel we have had access to Her Majesty's Government as and when required, which has been exceptionally useful as we strive to work our way through this pandemic.

Jeremy Miles: Obviously there have been high levels of co-working between the CMOs and CSOs. On an intergovernmental basis, ministerially and otherwise, the absence of functioning intergovernmental machinery obviously meant that Cobra was the forum to which Governments turned. When Cobra met—it has not met for many weeks—it was an effective forum. I think the MIGs, which again were stood up and stood down without our engagement in that process, were good opportunities to work together and were effective.

Both Cobra and the MIGs have been the end of regular cross-Government ministerial engagement. Nothing has replaced them in that cross-Government way. There are ministerial calls, there are ministerial quadrilaterals in the Business Departments, the Finance Departments and other portfolios. That is obviously important. There are weekly calls I think between the Permanent Secretaries, which are obviously important.



HOUSE OF COMMONS

However, for that ministerial cross-Government, Prime Ministerial-First Ministerial, level of engagement, there is not a forum that operates frequently and regularly.

Where these structures have worked, they have worked well, but they have never quite got into that pattern of reliable, regular contact on a predictable basis throughout this period. I think that is what we should be aiming to put in place, a structure that delivers that sort of regularity and frequency of contact.

Q76 **Ronnie Cowan:** Michael Gove told this Committee that devolved Ministers take part in all Covid-19 committees as equals. Does this reflect your experience?

Jeremy Miles: As I say, Cobra was an effective forum but there is not a sense of shared agenda for that, which is also the case across a number of these fora.

If you were designing structures that operate on the basis of a four-nations structure, you would design them differently. That is not to be critical of Cobra or the MIGs, I am not seeking to be.

Ronnie Cowan: To go back to the question, as a Minister, do you feel you have been treated as an equal within those committee meetings?

Jeremy Miles: Some committee meetings more than others, absolutely, but they have been valuable opportunities.

Q77 **Ronnie Cowan:** Do you get to inform your own governance, are you actually helping to form UK-wide policy?

Jeremy Miles: It depends on the issue, doesn't it? As we discussed earlier, a number of these areas are fully devolved. Therefore, the UK-wide policy is an aggregate of decisions taken by Ministers in four Governments. The key point is to be able to work together on those in that forum.

Q78 **Ronnie Cowan:** The same question to you, Mr Lyons. Do you feel fully respected in these committees? Are you informing or forming UK-wide policy?

Gordon Lyons: I certainly feel we have been respected in these committees. When we enter some of these calls, we are one of maybe 20 or 30 Ministers. I suppose many of the calls I have been on would be issues that are mostly devolved. From my point of view, a lot of the time, it was useful to hear the discussion between Ministers who had responsibility for England, which was useful for me to take back to the Executive and to other Ministers.

Again, the most useful engagement we had in the meetings was with the Secretary of State and, indeed, the Prime Minister, who had regular calls with the three devolved Administrations and with the Mayor of London.



HOUSE OF COMMONS

We certainly put our views across, and we informed the Prime Minister and other Ministers of our thoughts. Perhaps you could say we contributed in that way to the formation of policy. Whether Ministers took that on board or not would be a different matter, but I never felt we were there just to make up the numbers. We were always being called on to make our contributions.

We can look back on a number of things over the last number of months and say, "It would have been better if this had been different or if we had approached it in a different way." I think we are all learning through this process but, largely, we do not have complaints about the way in which we engaged with Her Majesty's Government.

Michael Russell: It obviously depends on the meeting and on the circumstances. There are meetings in which I certainly do not think any heed is paid. Indeed, you only get a partial view because you do not know what was said in the meeting before or the meeting afterwards.

As a rule of thumb, particularly in the Brexit process, I have tended to say that the more important and vital the issue is, the more likely people are to be sensible about it. In these circumstances, when you are working on literally matters of life and death, I think there has regularly been good contact; on other matters it has been pretty appalling, I have to say.

Q79 **Rachel Hopkins:** Gordon Lyons, when you said you were blindsided by the Irish Government, would you say that the discussions you have had with the Irish Government have primarily been carried out at UK level rather than the devolved level?

Gordon Lyons: Most of the engagement with the Republic of Ireland, it is fair to say, has been through the quad; through the First Minister, the Deputy First Minister, the Secretary of State for Northern Ireland and the Republic of Ireland Ministers. I have not been part of all the engagement, and I think there have probably been some bilateral calls between Northern Ireland and the Republic of Ireland. My point was that we have not always been informed of decisions beforehand, which is completely understandable because it is obviously a separate jurisdiction and they are under no obligation to tell us what they are doing. However, I was making the point that our engagement with the UK Government is very, very good in terms of them letting us know about their plans and their direction of travel.

Q80 **Rachel Hopkins:** Our Committee has heard concerns around communications from the UK and devolved Governments, with regard both to the timing of announcements and to there being a bit of confusion around whether a rule applies to the UK as a whole or just to England, and so on. In the discussions and groups you have had, was any consideration given to having co-ordinated briefings and communication strategies? How do you see this going forward, because nations seem to be diverging even more coming out of lockdown?



HOUSE OF COMMONS

Michael Russell: There was a daily communications call that came to an end on, I think, 5 June. That was a helpful structure. It was not perfect, but it was a helpful structure. Again, it is one of these things that just stopped, as the MIGs changed and just stopped. It is that co-ownership of it.

Inevitably there will be different messages, because there are different priorities and different advice. It is not entirely any single Government's fault if that gets confused. The media tends to shorthand many of these things, and you find a decision that is made, for example, by the UK is broadcast as if it applies to the whole of these islands and not simply to one part of them. That is an issue. Equally, it is important that we make the right decisions and communicate them as best we can. That could certainly improve, but in order to improve you have to continue with the structures to allow communication to happen.

Jeremy Miles: At the start certainly, there was a concerted effort between the Prime Minister and the First Ministers to agree public lines around announcements, and I think that was valuable. The daily calls obviously were helpful. There was a lot of sharing, certainly in the early stages, of materials that had common messages across the UK and that we were able to translate, for example, in Wales. That worked very well.

When the fundamental message of the UK Government moved in a different direction from "Stay Home" to "Stay Alert" that point was, in a sense, a watershed in the common approach to communications. There were some examples around that date of the "Stay Alert" message being broadcast into Wales, for example, when the message was "Stay Home" in Wales. There were issues around that.

There is certainly an issue with media reporting. We took the very unusual step as a Government of briefing the lobby on devolution matters and how the constitution works to help with that reporting. Certainly our impression is that that was effective.

There were definitely opportunities that were missed, I would say, on the part of the UK Government to clarify that messages were intended for an England-only audience. I took the unusual step of writing, in my capacity as a Law Officer, to the Attorney General to ask for that to be rectified. In the interests of the rule of law, we should all want our citizens in the different parts of the UK to understand which laws apply to them.

It is a complex situation and, in a sense, this has enhanced the understanding of a lot of people across the UK about what devolution means and how different laws apply in different parts of the UK. I do accept it is an evolving picture in that sense, but it is incumbent on Governments to be very clear about the territorial limits of the regulations they are introducing. That has not always happened.

Gordon Lyons: Yes, at the start there was very much a UK-wide message, which was useful. Jeremy is right that, at the time of the Prime Minister's



announcement on relaxing the restrictions, there was a difference across the rest of the UK. There could have been potential for some confusion there. In Northern Ireland, however, people are well used to devolution here and sometimes having a slightly different way of doing things. We have, for example, our daily press conference here. I think people in Northern Ireland knew, "Okay, this is what has happened in Scotland, or Wales, or England, but what has happened here? We need to look to our own Executive to find out." I think we have been able to move ahead of the rest of the UK in some measures in regards to the relaxation of restrictions. That has sometimes made it easier, being the first out there as well.

It is inevitable there will be a bit of confusion and that people are going to say, "I hear this has changed" or, "I hear this is different." It is part of devolution that there are going to be different approaches across different parts of the UK. I have a constituent, a personal trainer, who is very keen that gyms get reopened again, who said, "I hear gyms are reopening, I saw a *Daily Mail* article about it" but it was the *Daily Mail* in Australia. There is an inevitability that there will always be some confusion, but I think, for the most part, people have been looking towards their own devolved Governments for information and the possibilities for confusion have been limited.

Chair: I am sure we all agree that we need the gyms to reopen, myself in particular.

Q81 **Mr David Jones:** The Coronavirus Act touches on various areas of devolved competence. Could each of you tell me what part your Administration has played in helping to shape that legislation?

Jeremy Miles: Co-working in relation to this Act was extremely effective across the UK. Certainly our experience as a Government was that we had good levels of information sharing, discussion and shared endeavour, if you like, around aspects of the drafting, and I would like to put that on the record. I suppose that is a process angle.

Substantively, as Mike mentioned in his earlier comments, the Coronavirus Bill was obviously based on the Flu Bill, which had been the product of working between the four Governments. There was substantive input from that underlying Bill going into the Coronavirus Bill, reflections if you like. There were provisions in relation to the education powers, for example, on which there was a difference of opinion, and we ultimately managed to persuade others that it needed to be amended. There are a number of examples of substantive input into the provisions of the Bill.

In terms of the process by which the Bill became law, if one was to stand back, it was driven by the parliamentary timetabling in Westminster, perhaps not having as much of an eye as one would hope to the different parliamentary processes, certainly in Wales. I think there are circumstances where one can stand for that in the context of urgency, which was obviously important.



HOUSE OF COMMONS

However, overall, from both a process and a substantive point of view, we would say we had good input into forming that legislation.

Gordon Lyons: Yes, I have to agree. First of all, I also want to highlight the importance of the draft Pandemic Flu Bill that had been planned for extensively over the last couple of years. I think it was Exercise Cygnus in 2016 that led the planning preparation for an event such as this. Therefore, a lot of that work had already been done, dealt with and built into our civil contingencies resilience programme. The Department of Health led on this issue for the Executive. There were a number of Northern Ireland-specific issues, on which there was consultation, that we were able to get into the Bill, which was helpful. That included allowing us to use part of the Public Health Act (Northern Ireland) 1967, which was actually the mechanism by which we have been able to bring in restrictions and also relax those restrictions as well. Certainly we feel we had input. We needed some changes to the legislation, I think it is sections 37 and 38, for explicit provisions on childcare.

Obviously I would also agree with Jeremy that these were very tight timeframes that we were working with. Assembly Members mentioned in the debate that they would prefer to have had more time to discuss these policy areas—we gave permission for Westminster to take this through, on our behalf—but certainly there was a high level of co-operation between officials and Departments in HMG and in the Northern Ireland Executive.

Michael Russell: I have very little add. My experience of developing Bills cross-border has always been the more detailed the discussion between officials as the Bill is developing, and the more recognition there is of the devolved competencies and the reserved competencies, the more effective that process will be. Even though this was a hurried process, it was built upon the foundation of co-operation on recommendations and, therefore, it was possible to take it through.

I want to correct something I said at the very beginning, it was 21 February, not 19 February, that the first print of this Bill was available with the title Coronavirus Bill, and then it became the Coronavirus Act. Within a month almost it was law. As you know from previous work, it has not been our practice to give legislative consent very often to Westminster Bills these days given the process is broken, but we gave legislative consent very quickly to this because it was based upon a recognition of devolved competencies and because it made sure that devolved powers were recognised and could be operated according to Scottish law, and it was very important that it did that.

It also gave us the opportunity in the process to say, “What can we do to this Bill, and what do we then have to do through other legislation?” and of course we have passed two further emergency Bills, the review process of which has been folded into the review process of the UK Bill. We have developed a system of reporting and scrutiny that is based on our experience of the first Bill.



Q82 Mr David Jones: The legislation, of course, will expire after six months unless it is renewed. What would be the political and legal implication for the Scottish Administration if it were not renewed, and what further information and discussions do you need to make the decision at that six-month point?

Michael Russell: If it were not renewed by the UK, certain powers would fall but not all the powers because there are two other Acts in operation, nor do I think the regulations would fall in those circumstances. There needs to be some co-ordinated discussion on this. The involvement of the Parliament is very important. We are a minority Administration, only slightly but we are a minority Administration. We have a very strong commitment to scrutiny of the legislation by the Parliament.

Parliament has established a special Committee to look at the legislation, the regulations and the work of the Scottish Government, and I am appearing before it yet again tomorrow. I have been in front of it several times, talking about reporting processes and what the Bill and the regulations have achieved. We will come to that conclusion with the view of Parliament very heavily in mind and with the status of the pandemic very heavily in mind, along with the WHO criteria and the other criteria we have set. I know that on the reporting process, for example, the UK Government drew up their own report and we have drawn up our report, and they are not the same. We have gone in a slightly different direction, but they are complementary documents because they show how the legislation is being used. Clearly we will keep having conversations about it.

Q83 Mr David Jones: Have discussions begun with the United Kingdom Government and the other devolved Administrations about renewing?

Michael Russell: There are continual discussions on reporting. I am not aware we have discussed renewal as yet. There is another reporting period. We are reporting every two months, and the second report will be due at the end of July and we have a fortnight to report, so the second report will come out sometime in the first fortnight of August. I think that is the period in which we begin to talk seriously about whether it should be renewed. Of course we can switch on and off certain provisions, and that is probably as likely as anything else. Provisions can be switched on and off at any moment, and that has been effective because some of the provisions have been switched on in some places but not in other places, so it has adapted to circumstance.

Gordon Lyons: That covers most of it. For us, the main impact of the Coronavirus Bill has been in relation to the coronavirus restriction regulations. Those will continue to be in force. Obviously if there needs to be a renewal of the Bill, or of certain aspects of it, we will have those conversations and be prepared to give legislative consent if and when it is necessary.



Jeremy Miles: We are still making use of the Coronavirus Act in various ways, so we have notices in the education space, local government and social care that have either recently passed or are on the horizon. The foundation on which that builds, which is the public health legislation in Wales, was updated in 2010 and provides a good range of powers for the Welsh Government, but there are some aspects, obviously the Coronavirus Act, which otherwise would not be available to us that have played an important part around removing barriers to healthcare workers going back into the workforce, for example, and then some aspects that are reserved, statutory sick pay, that have played an important part in the set of responses to coronavirus.

There are clearly ongoing circumstances in which the Act plays, I would suggest, an important part, and some of those are in devolved areas as well, such as education and local government, where we continue to make use of them.

Q84 **Mr David Jones:** Has consideration yet been given by the Welsh Administration to renewal of the Act? Have you had discussions about that?

Jeremy Miles: As Michael said, there are ongoing discussions across the UK, but I am not sure specifically about renewal.

Q85 **Jackie Doyle-Price:** It is good to hear you all agree that co-operation on the Act has been very constructive. Obviously the legislation gives all devolved Administrations more power to deal with this, are you satisfied that you would have had the powers to deal with Covid without that legislation?

Jeremy Miles: As I said earlier, the public health legislation provides a really good foundation, but there are some aspects that we would not have been able to tackle without the powers in the Act. Some may involve being able to do that more flexibly, but there are some provisions, for example around curriculum, special educational needs provision in school and so on, on which we are using the powers in the Act. There are other aspects that are a legislative Government process, things that are perhaps more mechanical or technical, which are important. We certainly would not have been able to do everything that we have been able to do without the benefit of the powers in the Act.

Michael Russell: It is an interesting point. I am mindful of what was in the first Act. We legislated in two further Bills that were passed very quickly, one in a single day and one in a period of 10 days, and therefore we were able to put in place other things that we needed to do. Looking at the details of it, there are issues, for example the registration of medical practitioners, that we probably could not have done because the registration of medical practitioners is a reserved matter. Where there are reserved matters, some reserved matters within the Bill were not used in Scotland or applied to Scotland. The volunteers programme, for example, was not applied to Scotland. It was not part of the Bill. It is difficult to say. There are probably some powers in the Bill, and I am just looking at the



HOUSE OF COMMONS

powers here, such as some of the section 75 powers on financial assistance to industry that would have been difficult to do without this legislation, so I do not think there is any doubt there were some things that were maybe easier to do and, therefore, it was very much worth doing.

As it was approached on a four-nations basis, everybody was able to chip in with things that they felt should happen, some of which they could not do themselves. We can do a fairly substantial amount—we can do all the education stuff, all the housing stuff and all the health stuff—but where there was stuff that was dealing with reserved issues, we would have had difficulty doing it, I think that is fair to say.

Gordon Lyons: Obviously there were reserved matters that we would not have the competence to legislate for. Those have been mentioned already. For the transferred matters, yes, we probably would have been able to bring in our own legislation. It probably would have taken a little bit longer. I think it made sense to co-ordinate on a UK-wide basis, and it is important to have a consistent approach across the whole of the UK in terms of having a legislative framework that provides sufficient powers, and the Coronavirus Act allowed for that to happen. Again, it is not as if we did not have any input. Like everybody said, we had input on the Coronavirus Act and, when changes needed to be made, we were able to do that.

Q86 **Jackie Doyle-Price:** One of the issues we have been looking at as a Committee is the degree to which this legislation was necessary, or whether we could have relied on the Civil Contingencies Act. Between the three of you, you have given a very good pitch in favour of this legislation, but was the possibility of using the CCA ever discussed with you? Do you think it would have been an appropriate vehicle?

Michael Russell: I don't think it would have been for two reasons, and I think the decision not to use it was the correct decision. I don't think any one of us knows precisely when that decision was reached; it just seems to have been a decision that seems to have happened. What emerged with this legislation, and then subsequent legislation that we passed, was the flexibility, which I do not think the Civil Contingencies Act has. The Civil Contingencies Act is, of necessity, a pretty inflexible instrument. It lays down very clearly what should happen.

The second one—and this is perhaps a more minor but interesting matter—is that it might have been ultra vires to use the Civil Contingencies Act in these circumstances when there was time to do something else, and that is one of the qualifications on the use of the Civil Contingencies Act. It was tight, it was difficult, this was essentially put together in a month and passed in a month but there was a time to do something else. The Civil Contingencies Act is designed for circumstances where there is no time to do anything else, so I think there might have been a legal challenge to that.



HOUSE OF COMMONS

We also have reservations about the Civil Contingencies Act and its place for the devolved Administrations. Now I have given you three reasons. The strongest of them is it was possible to do something co-operatively.

Gordon Lyons: I don't think there is anything to add to that. We have no objection in principle to the Civil Contingencies Act being used where necessary, but the Coronavirus Act was the better vehicle.

Jeremy Miles: I can do it in one sentence. The fact that it was possible to design and draft a piece of legislation that took into account the kind of powers and circumstances it was aiming for is the best evidence that that was the right approach. One ought not to reach for contingencies legislation where the things one is trying to deal with are reasonably foreseeable and there is a certain amount of time for enacting them. Clearly both of those things were the case, and the Coronavirus Act is the product of that.

Q87 **Karin Smyth:** Mr Lyons, I have family in both Cavan and Fermanagh, so I watch the changing regulations across the border with great interest. You said there was some added value but that some things were a bit blindsided, so it is a bit of a curate's egg and a bit difficult, is it not? The need to co-ordinate with the Irish Government and the UK Government, how did that factor in the timing of regulations introduced in Northern Ireland?

Gordon Lyons: We were very clear at the start that we were going to move at the pace that was right for us. We had to look at our own R number. We had to take the scientific and medical advice that we had been provided. We also had to look at our own circumstances in terms of the capacity of the health service to cope, and we had to look at the broader impact that the restrictions were having on our economy, on people's wider health and on families. All these issues had to be taken together. From very early on, after we put in the restrictions, that was the approach that we were going to take.

Obviously we look at what is happening in other jurisdictions as well. We want to be matched up with the rest of the UK, if possible. It is good to move on these things together. There was a memorandum of understanding with the Republic of Ireland on the sharing of information that was taking place, but ultimately we said time and time again that we are not going to be bounced into doing something just because someone else is doing it somewhere else, and I think that is very important. There are different rates of infection. Our individual circumstances need to be taken into consideration, but I think we have been proven right on that. If you look at where our infection rate is and where the death rate is sitting at the moment, no deaths in the last two days, it has shown that we have taken the right decisions at the right times.

Q88 **Karin Smyth:** In terms of the process, I think everyone is agreed that the JMC was not helpful. You also have to deal with Strand Two of the North/South Ministerial Council, under the GFA or Belfast Agreement, and the British-Irish Council, which also do not seem to be helpful. We seem to



be creating new processes and new groups. What is your view of that? Do you think we should be able to use existing structures a bit better, or is this unusual in that we are better with the informal, as Mr Russell previously said?

Gordon Lyons: I take a pragmatic approach to this. I want to see whatever works, and I think some of the formal structures we had in place in the past were not the most useful vehicle this time around in terms of the North-South engagement that was initiated on Saturday, 14 March so that we could be aware of what was happening in the Republic of Ireland and share with the Republic's Government what we are doing in Northern Ireland. That engagement has continued. We have not always had foreknowledge of some of the changes that they were going to make, but I do think it has worked best on an ad hoc basis. Those meetings have been frequent and regular, but I am not necessarily convinced that the existing structures that were in place were the best. We are in a unique situation, and we have to acknowledge that.

Q89 **Karin Smyth:** Mr Russell and Mr Miles, is there anything you would like to add? We are interested in the process by which the timings affected different decisions. Is there anything you would like to add on that with regard to lockdown from your jurisdictions?

Jeremy Miles: Going into lockdown happened with a high level of alignment. Coming out of lockdown has shown less of that, but I think that is because the Governments are taking different judgments for their territories based on the evidence. I do think there is a need—we had Cobra in the early stages—for a cross-Government, agile ministerial structure to be able to deal with this. Clearly JMC is not that structure, but there needs to be some sort of agile interministerial structure to be able to continue that ministerial strategy, a cross-Government approach that was evident at the very start.

Michael Russell: I agree with Jeremy entirely in terms of decision-making and timing. That is dependent on the circumstances we find ourselves in and the nature of the virus and where it is. On structures, I have been a delegate to the BIC on and off for a long time, and it is a consultative, conversational body. It is not an executive body of any sort, and it would perhaps be interesting to have a discussion across the Administrations, but I don't think there was any role for it.

The real problem here is that the JMC has not functioned properly almost since it was established. This Committee, of course, looked at it in a previous incarnation. I do not think there has been a single academic report that has found it fit for purpose. The JMC is bust, and I am the only person who has been to every meeting of the JMC (EN) and, believe me, it is bust.

In these circumstances, we need something new. I have my own views of what that should be. I am not a closet nationalist by any manner or means, but in these circumstances—David Mundell is laughing—there is a crying need for change to the intergovernmental structures that has been



presaged by work that Wales and we have done. Jeremy and I have both given lectures on this in the last year, and nothing has happened from the UK Government at all. We have seen nothing and, until that has changed, it will have to be ad hoc structures because there is no formal structure that conserves the premise.

Q90 **David Mundell:** I have accused Mr Russell of many things but never of being a closet nationalist. Starting with Mr Miles, but also Mr Russell and Mr Lyon, is it your view that the optimal situation for leaving lockdown would be alignment?

Jeremy Miles: I think the closest alignment we could achieve is ideal. We are firmly committed to a four-nations approach as a Government but, as I mentioned at the start, I don't think that means taking exactly the same decision at exactly the same time, because circumstances do vary in different parts of the UK. Partly that is around transmission, partly it is about geography and racial dimensions. There are all sorts of considerations, and a four-nations approach allows there to be a commonality in direction. Ideally Governments would take broadly the same sorts of steps in broadly the same circumstances, but with the capacity to fine tune those decisions and interventions in circumstances that apply in the different parts of the UK.

For example, on 10 May the UK Government decided to move from "Stay Home" to "Stay Alert". Obviously, insofar as England is concerned, that is entirely its prerogative, and we sought as a Government not to be critical of decisions taken in any other part of the UK, even though we have taken different decisions from time to time in Wales. Each Government will have been the first in some ways to take a particular step. There is a pattern of that across the UK, and I think that reflects different judgments and different circumstances. As I said, it is not a question of putting the scientific advice through a computer and coming out with an algorithmic response; there are decisions that are made, and it is important that we acknowledge that openly.

Michael Russell: Gordon made a good point a couple of questions ago. The issue here is effectiveness and outcomes; it is not conformity. The reality is that what we should be doing is making the right decisions in the right way with the advice that we have in order to produce the right outcomes for the people we serve. It would be quite the wrong thing to say that what we really want is to have conformity, even if that means those decisions are not the right decisions.

With respect, I think the question is not the right question. If you take an example in the emergency legislation, there are a number of items in the emergency legislation that can be switched on and off by the various Administrations. Let us take one of them, which is the mental health provision in terms of the signatures required in mental health circumstances. We have not switched it on. England has not switched it on. I think Wales switched it on in May and Northern Ireland switched it on in June. Those were different reactions to circumstances prevailing within the



HOUSE OF COMMONS

countries. One of our parliamentary Committees thinks we should now give it up because it has not been used, but the Royal College of Psychiatrists has argued that it should be kept because it might be needed. That reflects the circumstances within the individual countries and is therefore input and outcome-driven.

I do not think conformity is the issue. We have not criticised other people for making other decisions. We have made the decisions we think we should make, and those decisions have been and remain cautious. We believe that is the right thing to do for everybody in the country.

Gordon Lyons: The important thing to note is that we switched on lockdown, if you like. We are not just going to switch it off, so there is an inevitability that different parts of the UK will be out at different times. Obviously it would be great if messaging could happen, but within our regulations there is a requirement that the Department of Health must terminate any regulation if it is no longer deemed necessary to control the spread of the pandemic, so we are under a requirement to terminate these whenever the Department believes that it is safe to do so.

We have to remember that these regulations have had a huge impact on the lives of people right across the United Kingdom. Because of these regulations we have not just a Covid crisis but a non-Covid health crisis, a social crisis and an economic crisis as well. We have said repeatedly that we will not keep these restrictions and regulations in place any longer than they have to be, which is why we have removed them as soon as we have been able. We should continue to have the right to do that. If Scotland needs to take a little bit longer or if Wales can do it a little bit sooner, so be it. That takes a huge burden off their people because of the nature of these restrictions. Where we can do things together, we should, but we do have a responsibility to terminate these restrictions as soon as possible.

Q91 **David Mundell:** Mr Lyons, in one of your previous answers you set out that you took cognisance of what was happening in the Republic of Ireland, and Mr Russell indicated that with his external affairs responsibilities he takes cognisance of what is happening elsewhere in Europe. To what extent do you take cognisance, in making decisions about easing lockdown, about what is happening elsewhere in the United Kingdom and what impact the decision would have on messaging, which each of you has highlighted as important and potentially threatened by having different decisions?

Gordon Lyons: It is fair to say that if we were seeing a rapid increase in the rate of transmission in another part of the UK or, indeed, even in the Republic of Ireland, I have no doubt that the Chief Scientific Adviser and the Chief Medical Officer would take that into consideration. Of course they would. Northern Ireland is not isolated from its neighbours, so those issues would need to be taken into consideration, and the rate and spread of the virus is part of our decision-making approach.

We can look back and see trends. Whenever a peak took off, perhaps in London and the south-east, we were a couple of weeks behind. Obviously



with the lockdown measures that we brought in, hopefully that will have stopped the spread somewhat but, yes, of course we are going to take into consideration what happens elsewhere. That is already part of our decision-making process.

Yes, messaging is very important, very key, but I believe people have the ability to distinguish between what is happening in other parts of the UK, the different restrictions that are in place and how and why these are changing. I have been a Member of the Assembly for five years, and in that time I have never had as many people engage with an issue. They are always looking for information, they are always wanting to know what is going on. People are very engaged on this issue already, so I think the possibility for confusion has been limited in that way.

Jeremy Miles: The cross-UK perspective is baked into how these decisions are taken. Having that broader context in decisions is something that all the Governments will be taking into account. I take the point you make about clarity of communications. As David and I both know, Wales and England have a very long common border, so there are particular challenges around communicating different regulations to residents living near that border on either side. We have been very clear. Perhaps it is easier as a devolved Government to be clear about the territorial extent of the regulations, but the point I made to the Attorney General in my letter to her was that the Prime Minister and UK Government Ministers ought to be clear about the territorial delineation of UK Government regulations.

Michael Russell: I am very conscious of what is taking place right across these islands. I do not think it should be the stuff of politics. I think we should be clear across parties that it is not only right to make decisions but it is right to make decisions based on the circumstances for which we are responsible, and therefore we should be tolerant of that. We have endeavoured very hard not to criticise others, but we believe it is the right thing to do. If we ourselves are criticised, that makes it a little bit harder. Of course there are people getting messages from all over the place who have expectations. It is sometimes hard to work against those expectations but, as the First Minister made absolutely clear last week, in the latest stage of moving on from lockdown the responsibility is to save people's lives, and that comes first.

David Mundell: I am conscious that we are approaching 11 am.

Chair: Indeed, Mr Mundell.

Q92 **David Mundell:** Finally, what is each Administration's approach to publishing the evidence on which those differentiated decisions are made?

Michael Russell: We publish a great deal and will continue to do so and be very open about it. We have given a lot of evidence, and the First Minister speaks every day. In addition, she makes a weekly statement to Parliament. I think there have been 27 statements to Parliament so far and material has been published, absolutely.



HOUSE OF COMMONS

Jeremy Miles: We publish a report from TAC, the Technical Advisory Cell, every week that provides the scientific basis for decisions.

Gordon Lyons: We take a similar approach every Thursday, and we release the R number and the associated evidence that has been presented to the Executive.

Chair: We will go to a quick supplementary from David Jones, obviously being conscious of our minute's silence at 11 o'clock.

Q93 **Mr David Jones:** I want to come back on the point that Mr Miles briefly made on the issue of communication. It seems to me that that is particularly difficult in Wales, given there is no Wales-wide printed medium and, frankly, a large number of Welsh television viewers tune into Winter Hill, particularly in north Wales, of course. How does the Welsh Government get its message over given those practical difficulties?

Jeremy Miles: We take every opportunity through our lunchtime televised briefings. We put signs up on the motorway for people travelling into Wales, along the motorway in the south and the A55 in the north. We brief and lobby Westminster to draw up distinctions between what is happening in different parts of the UK. You make a fair point about the nature of the media landscape in Wales but, within those constraints, we do what we can.

Q94 **Mr David Jones:** It is difficult though, is it not, to communicate that sort of message given the particular issues in Wales?

Jeremy Miles: That is why we are acting urgently to make sure there is a clear set of messages across the UK.

Chair: Your next set of questions will be led by Tom Randall, but I am pausing, conscious that it is not fair to begin that and then immediately pause, ahead of our minute's silence at 11 o'clock.

One minute's silence was observed.

Q95 **Tom Randall:** I want to address the issue of preparedness. You may feel we have touched on this already but, under the Civil Contingencies Act, Scotland and Wales have emergency planning responsibilities. Mr Miles, can you tell us how you worked with the UK Government to ensure that the whole of the UK is adequately prepared?

Jeremy Miles: Ministers and officials across the Welsh Government are working on a multi-agency partnership basis. There are obviously plans within each portfolio. It is a process by which we review the main strategic risks and mitigate them as far as possible. In Wales we have four local resilience fora, which enables high levels of communication and visibility. We have a Wales-wide resilience forum that the First Minister chairs.

In the health context, in particular, there are obviously arrangements in place to support NHS Wales's emergency planning and, in the context of Covid specifically, there were two desktop training exercises in preparation for that. We know from other contexts that the emergency co-ordination



response is one of the areas of intergovernmental relations that have the longest history of effective working together, and I think that will be the same in this context.

Michael Russell: Jeremy's final point is a very important one. There has been a long history of co-operation on emergency response. There are established teams that work on emergency response. We have our Government Resilience Forum team that works both with the UK and the other nations of these islands, but it also works with the local resilience partnerships of which we have a number. Two things happened that probably assisted preparedness. One we have talked about, which is the work that was done on pandemic flu in terms of preparing a Bill, so there was official thinking going on within Government about how people would work together and how they would be prepared.

The other thing was the preparations for a Brexit no deal, and we all dusted down the preparations we would need to make. We were eventually meeting on a weekly basis with a very strong preparedness for the consequences of that. Of course, we stood up at the end of March last year the police incident room and the police control room, and a whole range of things were in place.

We also learned quite a lot from discovering, talking about and looking into the issue of food chains and food supplies. While there was work done on pandemic flu, there was also work done on some of the structures that we were able to put in place. As I have said, not only have we taken part in Cobra but we have instituted our own resilience operation that continues to be there. That is co-ordinating the data and information at each departmental level, and that feeds into that process.

Q96 **Tom Randall:** Mr Lyons, Northern Ireland has far greater control over civil contingency planning. What processes are in place for co-ordinating these preparations with the UK Government?

Gordon Lyons: We have well-established and tried-and-tested emergency response arrangements here that have been used to support the co-ordination of responses to various civil emergencies during the years. At a strategic level, arrangements known as the Northern Ireland central crisis management arrangements are used to co-ordinate the response to the most serious emergencies in Northern Ireland, and more detailed C3 arrangements—that is command, control and co-ordination—support the operation of NICCMA. These were originally developed to support the EU exit preparedness but have also been used to co-ordinate the pandemic here over the last number of months.

Obviously, these arrangements will dovetail into the UK C3 crisis management arrangements led by the Cabinet Office, and then at an official level and in the ministerial co-ordination that we have spoken about already. In addition, we also have the Civil Contingencies Group, CCG, which met every morning for the first two and a half months of this pandemic, which brought the Senior Ministers together along with the



HOUSE OF COMMONS

Permanent Secretaries of each Government Department and associated agencies that required input. We have also used all of those things working together over the last couple of months.

Q97 **Tom Randall:** What role has the Cabinet Office played in ensuring that the emergency preparations are in place and of sufficient standard?

Gordon Lyons: Again, I would say a lot of this is done at local level. A lot of the contingencies we needed to have were already in place but, like I said, they dovetail with the rest of the UK. The Cabinet Office has provided help and assistance in different ways, as and when required. I could get you some further specifics on that if that would be useful to you.

Q98 **Chair:** It would be extremely useful to the Committee if you were able to write to us with further detail on that point. I am sorry for interrupting you.

Gordon Lyons: Not at all.

Q99 **Tom Randall:** Mr Miles, what role has the Cabinet Office played as far as you are concerned?

Jeremy Miles: The early response was essentially an emergency response under Cobra, and at that point, as I mentioned briefly earlier, I thought it was an effective set of interactions. The Emergency Co-ordination Centre worked well with the UK Government and other Governments across the UK.

Q100 **Tom Randall:** Mr Russell, do you have anything to add about the Cabinet Office in particular?

Michael Russell: The preparation had been made in the sense that we had experience of other things, so it came into place.

Q101 **Tom Randall:** The Civil Contingencies Act places obligations on authorities to plan for emergencies. What safeguards are in place to ensure these obligations are complied with when forming policy? Are they co-ordinated across the UK?

Jeremy Miles: I may have to get back to you on that. That is a level of specificity I don't have at my fingertips today.

Michael Russell: I am quite happy to send further details of the Scottish structures. The structures are in place and operate effectively. They are tested from time to time and are stood up when required, as they were during the preparation for a Brexit no deal.

Q102 **Chair:** I would be very grateful if answers could be as brief as possible, please. Do you regard some sort of public inquiry into the UK's response to the Covid pandemic as desirable?

Jeremy Miles: Yes, the Welsh Government's position is that an independent public inquiry is desirable, and ideally it should operate on a four-Government basis.



Michael Russell: I think it is both desirable and likely, to be honest about it. That will be once this process is complete, and I think it is very important that we continue to focus all our energy and effort on ensuring that we suppress, defeat and hopefully get rid of the virus. That is still a huge task to be undertaken, and we should not assume that we are in any sense out of the woods. We are not out of the woods, and we have to make sure we focus our energies on making sure we do the job.

Q103 **Chair:** Mr Russell, would you consider a rapid inquiry into lessons learned in this first wave, perhaps, to be desirable?

Michael Russell: I have been very strong in my view that we need to continue to focus all the energy and resource we can on this matter. It is what has led me to be very critical on the decision to continue without seeking a Brexit extension. I do not believe that, at this particular stage, we should take our eye off the ball. We can see from other countries, if we are talking about the experience of other countries, some resurgence of the virus in some places, and this week in South Korea there was an indication that they believe they may well be into a second phase of the virus. Let us keep our eye on the ball and defeat this.

Gordon Lyons: The Northern Ireland Executive have not taken a collective view on whether or not there should be a public inquiry. My own personal view is that, if there is going to be one, it should be done on a UK-wide basis. There would be an awful lot of duplication if there was going to be four inquiries over the four different parts of the UK. In terms of a short inquiry ahead of an expected second wave, I certainly think work should be done on immediate lessons learned and shared with the devolved Administrations. If we are going to face a second wave, what have we learned, what has worked, what do we need to focus on and what additional precautions do we need to take? I certainly think that would be of some benefit and of use immediately, but a fuller public inquiry would be a matter for a later date.

Q104 **David Mundell:** Mr Russell, you are aware that there have been calls in Scotland for an inquiry into what happened in care homes—a separate, quick inquiry, rather than it being part of the wider inquiry that the First Minister has acknowledged needs to take place. Is it the Scottish Government's position to reject those calls for such an inquiry?

Michael Russell: No, it is the Scottish Government's position that we need to learn as much as we can as we go along about what has taken place and to make sure there is an opportunity to learn that lesson. I repeat my point: I think it would ill serve anybody if, for whatever reason, the work of all those people involved is to be distracted by another process just now. Let's get on and finish the job. The Scottish Government have not rejected or ruled out anything; they are working hard to do the very best they can. I hope there is still a cross-party consensus on that.

Q105 **David Mundell:** To be clear, you do not rule out there being a specific inquiry into what happened in care homes in Scotland?



HOUSE OF COMMONS

Michael Russell: What I want to do, Mr Mundell, and I have made this very clear, is carry on with the work that we are doing. Undoubtedly the question about care homes and other questions require to be answered across these islands, and in many other places as well.

Q106 **Chair:** Touching on other matters before we finish today's session, could I ask each of our witnesses whether they have seen a copy of the Dunlop report? Would they agree with the importance of its publication?

Jeremy Miles: I have not seen a copy of the Dunlop report, but I welcome seeing it as soon as possible.

Michael Russell: No, I have not seen the Dunlop report. I had almost forgotten it existed, but it is interesting to know that it does. No, we have not seen it. Given how these things happen, Jeremy and I will probably be the last people to see it, let alone the JMC that is meant to be discussing intergovernmental reviews.

Chair: For transparency's sake, I have not seen it either.

Gordon Lyons: I think we are all in the same boat. None of us has seen it.

Q107 **Chair:** We are all in the same boat indeed, all in it together. Have you had any indication of when the IGR review might be completed?

Jeremy Miles: No. The devolved Governments pressed for progress in relation to that at the last JMC (EN), and we are hoping there will be an opportunity for Ministers to consider at least some information in relation to dispute avoidance and resolution. We hope to do that in the coming weeks. Whether that proves to be possible remains to be seen, but certainly progress in relation to the IGR has been woefully slow and it now needs to be expedited.

Q108 **Chair:** Mr Russell, are you in the same boat on this one as well?

Michael Russell: Absolutely, no. The IGR was commissioned, I think, in March or May two years ago. Nothing has happened of significance. We were promised progress last year. We were promised progress this January at the JMC in Cardiff. Nothing continues to happen. We have ideas, but there do not seem to be any ideas coming to the table from the UK Government.

Q109 **Chair:** Mr Lyons, dare I ask the same question?

Gordon Lyons: Nothing further to add, Mr Chairman.

Chair: Thank you ever so much. I thank our three witnesses this morning for their time and their evidence to the Committee. I thank the members of the Committee, and I thank the broadcasting team as well. It was a useful session for our inquiry and I am grateful to you all.



HOUSE OF COMMONS