



House of Commons
Public Administration
and Constitutional Affairs
Committee

Parliamentary Scrutiny of the Government's handling of Covid-19

Fourth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Contents

Summary	3
1 Scrutinising the Coronavirus Act 2020 and lockdown regulations	5
COVID-19 Governance	6
Government guidance on who should continue to work	7
2 The Government's approach to legislation and the framework for Parliamentary Scrutiny	9
The passing of the Coronavirus Act 2020	9
A role for the Civil Contingencies Act?	9
Legal arguments for and against using the CCA	10
Use of emergency procedures for lockdown regulations	13
The value of Parliamentary processes and scrutiny	14
The framework of Parliamentary scrutiny under the Act	18
The six-monthly Parliamentary review	20
The two-monthly reports on the status of non-devolved provisions	20
3 The use of guidance and rule of law implications	22
Examples of differences between guidance and the law	22
The first lockdown regulations	22
The local lockdowns	23
4 Points of interest for the House for the six-monthly review	25
What is the six-monthly review?	25
What would happen if the House voted one way or the other?	25
Specific matters for potential consideration	26
Health Provision	26
Powers of detention and dispersal	27
Elections	27
Relevant documents and information for the debate	28
Two-monthly report on the status of non-devolved provisions	28
Timing of six-monthly review and two-monthly report	28
Criteria for judging the Act	28

Conclusions and recommendations	30
Formal minutes	35
Witnesses	36
Published written evidence	37
List of Reports from the Committee during the current Parliament	38

Summary

The Committee launched an inquiry into the Government's response to COVID-19 and the Coronavirus Act 2020. This report considers the following matters:

- The Government's approach to COVID-19 legislation and the framework for parliamentary scrutiny.
- The Government's use of guidance during the pandemic and the implications this has had for the rule of law.
- Matters of interest to the House for the first six-monthly review under the Coronavirus Act 2020.

While the Government insisted that the use of the Civil Contingencies Act would have been open to legal challenge, the Committee heard evidence that the COVID-19 pandemic was an appropriate time to use the Act. The Committee was not convinced that the Civil Contingencies Act 2004 could not have been used in response to COVID-19. In particular, the Committee concluded that there was a potential role for the Civil Contingencies Act as a "stop-gap" to permit more detailed scrutiny of the Coronavirus Bill, which was passed and given Royal Assent in just four sitting days. The Coronavirus Act does not include the same strength of safeguards as the Civil Contingencies Act. The Committee recommended that in future if bespoke emergency legislation is passed it should be given safeguards equivalent to those contained in the Civil Contingencies Act, such as regular renewal of powers.

The regulations introducing various levels of "lockdown" were made under the Public Health (Control of Diseases) Act 1984. All such regulations were made under what the Committee described as the "urgent procedure" under the Public Health Act. This meant legislation was brought into force without any form of prior scrutiny. Parliamentary scrutiny is important to improve the quality of legislation and there may have been errors or unnecessary confusion in the lockdown regulations. The Committee concluded that the case for the urgent procedure, particularly for regulations easing lockdown, was not always been justified and the Government should accord greater priority to scheduling debates on such legislation in a timelier manner.

The Government's use of guidance during the pandemic was also subject to scrutiny. It was not practical for the Government to legislate for every eventuality and guidance was an appropriate mechanism but some of the Government's guidance suggested that certain activities were banned when they in fact were not. An example of this was the local lockdown in parts of the North of England. On 30 July the Secretary of State for Health said that people were "banned" from meeting indoors with people from different households from "midnight". But this was not actually given legislative effect until 5 August. The Government misrepresenting the law undermines its own credibility when it seeks to convince the public to follow lockdown and social distancing measures.

The final chapter of the report sets out points of interest for the House for the first six-monthly review of the temporary provisions within the Coronavirus Act. The motion, if negated, will cause temporary provisions within the Coronavirus Act to be made to expire. The House has no power to compel only certain provisions to be expired.

The motion is an “all or nothing” proposition. The Committee concluded that the framework for parliamentary scrutiny of the Government's approach to COVID-19 is inadequate. The approach that should be taken for emergency legislation is something that the Committee will examine as part of its future work. The Committee has recommended that the Government provide, for that debate, information relating to the original rationale for the temporary provisions in the Coronavirus Act, why those provisions are still justified and the evidence base for demonstrating those provisions are still effective.

1 Scrutinising the Coronavirus Act 2020 and lockdown regulations

1. COVID-19 has posed one of the biggest challenges to the UK Government since the Second World War. The Government and devolved administrations have had to make decisions at pace with limited and incomplete data. This pace was demonstrated by the passing of the Coronavirus Act 2020. It had its first reading in the House of Commons on 19 March 2020, passed through both Houses and received Royal Assent just three sitting days later, on 25 March. The Government set out the five main purposes of the Act:

- Increasing the available health and social care workforce;
- Easing and reacting to the burden on frontline staff;
- Containing and slowing the virus;
- Managing the deceased with respect and dignity; and
- Supporting people.¹

2. In addition, a large amount of other legislation has passed in a short amount of time. As of 5 August the Hansard's Society's Coronavirus Statutory Instruments Dashboard reports that 173 Coronavirus-related statutory instruments have been laid before Parliament.² Some of the most important statutory instruments have been those implementing various levels of "lockdown" (which are referred to in this report as "lockdown regulations.")³

3. The purpose of the Committee's inquiry was not to second guess the bulk of the UK Government's decisions but rather to analyse:

- the effectiveness of the framework for Parliamentary scrutiny of the Coronavirus Act 2020 and lockdown regulations (chapter 2);
- the implications of the Government's approach, particularly with reference to lockdown regulations, on the rule of law (chapter 3); and
- the mechanics of the first six-month Parliamentary review, which will take place later this year and recommend the information that the Government should publish for that debate (chapter 4).

4. After we launched our inquiry, we amended our terms of reference to include requests for submissions on holding a public inquiry into the UK's handling of coronavirus. For clarity and convenience, we have decided to report on that matter separately.

5. In total we have published 27 pieces of written evidence and held four oral evidence sessions. The Committee is grateful to all of those who contributed to the inquiry.

6. The Committee did not take extensive evidence on matters relating to COVID-19 governance nor on the Government's guidance early in lockdown about which industries

1 Department of Health and Social Care ([RCC0017](#))

2 [Coronavirus Statutory Instruments Dashboard](#), Hansard Society, accessed 5 August

3 For the purposes of this report, we start with [the Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#)

should continue to stay open. The Committee does however make the following points.

COVID-19 Governance

7. The roles and responsibilities of different organisations and Government bodies in response to COVID-19 have not always been clear. On 2 March 2020 the UK.Gov website published a press release that the Prime Minister would chair a meeting of the COBR Committee.⁴ On 17 March, a further release detailed that there would be “new government structures to coordinate response to coronavirus”. The release explained that there would be “regular” COBR meetings but also a “daily C-19 meeting.” In addition, there would be four implementation committees that covered health, public sector preparedness, economy and international response, and would in turn feed into the daily C-19 meeting.⁵ The Chairs of these groups were:

- Healthcare: chaired by the Health Secretary
- General Public Sector: chaired by the Chancellor of the Duchy of Lancaster
- Economic and Business: chaired by the Chancellor
- International: chaired by the Foreign Secretary

8. The implementation groups were confirmed to us by the Minister for the Cabinet Office in April.⁶ Minutes of these committees are not published and it is therefore not possible to interrogate what role COBR meetings played in addition to daily C-19 meetings. The implementation committees appear to have been since replaced by two Cabinet committees, the ‘COVID-19 Strategy’ and ‘COVID-19 Operations’ Committees in June.⁷ While these structures existed to support decision making, press reports in April made reference to a “quad” of Ministers making decisions on the UK’s COVID response.⁸ It is not clear how this “quad” of Ministers functioned in practice, nor is it known who attended these meetings or how it connected to the formal collective decision making structure of cabinet committees. It is therefore not possible to know what advice the “quad” took when making decisions or whether their decisions had formal authority

9. Confusion as to the precise role of Government Departments was further compounded by the fact that the list of Ministerial responsibilities was not published following the previous general election in December 2019 until 28 August.⁹

10. The governance arrangements for responding to COVID-19 have not always been clear. Press reports of a “quad” of Ministers making decisions in April raise questions of a parallel governance structure in addition to the formal Cabinet Committee structure. Such parallel systems risk creating silos where decisions are made without the full and proper discussion, advice or consultation that would be expected in Cabinet Committees. Any review of the Cabinet Office’s response to COVID-19 should include an examination of the governance arrangements for COVID-19, including COBR, the

4 [PM to chair COBR meeting on the coronavirus outbreak](#), 2 March 2020, Gov.uk

5 [New government structures to coordinate response to coronavirus](#), 17 March 2020, Gov.uk

6 [Q172, Work of the Cabinet Office](#), HC 118

7 [List of Cabinet Committees](#), June 2020, UK.Gov

8 See for example, [Coronavirus crisis: Boris Johnson is back in touch with Cabinet as ‘quad’ of top ministers consider ‘traffic light’ plan to reopen economy](#), 19 April 2020, The i

9 [Government ministers and responsibilities](#), 28 August, UK.Gov

C-19 daily meetings, the “Quad” and Cabinet Committees. The Government must in its response to this report set out the governance arrangements and how decisions were made in response to COVID-19.

11. **The effectiveness of governance arrangements overseen by the Cabinet Office is something that will continue to be of interest to the Committee and form part of its future work programme.**

Government guidance on who should continue to work

12. The Government's guidance has been subject to criticism for lacking clarity, such as which businesses and organisations should continue to operate with people coming to work. The Government's initial guidance was that people should work from home and employers should help facilitate their employees to work from home, people should go into work only if they could not work from home¹⁰ It should be noted that it was not possible for all workers to work from home. Research by YouGov indicated that far more middle class workers could work from home than working class workers.¹¹ There was however some element of confusion about people who could not work from home, for example, the construction industry. This guidance also asked noted that certain businesses and organisations had been asked not to close, including those hiring “construction workers”.¹² However despite the suggestion that construction workers should continue to operate, many construction sites closed.¹³ The problem with construction sites was exacerbated when the Construction Leadership Council, a joint industry and government body, published guidance stating “where it is not possible or safe for workers to distance themselves from each other by two metres, work should not be carried out”. This guidance was withdrawn within hours following complaints from the construction industry.¹⁴

13. The ability of certain industries to continue to operate was hampered by the closure of schools. Once schools were closed, a list of “key workers” was published on Gov.uk. Key workers could continue to send their children to school. This list included workers in:

- Health and Social Care
- Education and childcare
- Key public services
- Local and national government
- Food and other necessary goods
- Public safety and national security
- Transport
- Utilities, communication and financial services¹⁵

10 [Coronavirus outbreak FAQs: what you can and can't do](#), 29 March 2020, Gov.uk

11 [Many more middle class workers able to work from home than working class workers](#), 13 May 2020, YouGov

12 [Coronavirus outbreak FAQs: what you can and can't do](#), 29 March 2020, Gov.uk

13 [UK building sites start to close despite government advice](#), Financial Times 25 March 2020

14 [Construction confusion as UK working instructions published then withdrawn](#), Financial Times, 2 April 2020

15 [Guidance for schools, colleges and local authorities on maintaining educational provision](#), 19 March 2020, Gov.uk

This list however did not include construction workers.

14. The Government's messaging on who could continue to work was not as clear as it should have been. The closure of schools and definitions of "key workers" caused some industries to close that could have continued to operate, such as the construction industry. There should have been greater recognition within the Government's messaging and guidance of workers who kept the economy going during lockdown. The Government must take care to ensure that its messaging is consistent and properly addresses all relevant audiences.

2 The Government's approach to legislation and the framework for Parliamentary Scrutiny

15. This chapter examines the swift passage of the Coronavirus Act and considers the argument that the Civil Contingencies Act 2004 could have been used as a “stop-gap” to facilitate more detailed Parliamentary scrutiny.

The passing of the Coronavirus Act 2020

16. As set out in chapter 1, the Coronavirus Bill was passed into law in just four sitting days including the date of First Reading. The Government also worked at great pace to draft the Bill quickly; the Minister for Health, Edward Argar MP, described “three and a half weeks’ worth of very intense work on drafting it, working with other Government Departments and tweaking the Bill as we understood more about the disease week by week.”¹⁶

17. Subsequent scrutiny of the Coronavirus Act and the Government's approach to COVID-19 is important because there was not sufficient time for thorough scrutiny to take place in those four days. As Sir Stephen Laws, former First Parliamentary Counsel, told us:

What you are usually doing with emergency legislation is substituting proper scrutiny for subsequent accountability, both because there is no time for the proper scrutiny and also because, very often in the sort of situation in which you are passing emergency legislation, there is not the political room for proper scrutiny either.¹⁷

18. **As a result of the timescales involved and the political situation, detailed scrutiny of the Coronavirus Bill was not practical. It is therefore very important that Government is held to account for how it uses and justifies the continued application of the Act. In chapter 4 we set out some points of interest to the House for the first six-month Parliamentary review, particularly in relation to the information that the Government needs to provide to help facilitate effective Parliamentary scrutiny.**

A role for the Civil Contingencies Act?

19. The Civil Contingencies Act 2004 (CCA) is the main piece of legislation that deals with civil emergencies in the UK. Thus far, the Government has opted not to utilise it as part of its Coronavirus response.¹⁸

20. The CCA was introduced as part of an overhaul of the UK's civil contingency machinery. The then Government felt that a succession of civil emergencies had highlighted

16 [Q122](#)

17 [Q48](#), Fixed Term Parliaments Act 2011 inquiry, HC 167

18 The Act has never been used. Its use has recently been mooted as a short-term means to address any unforeseen legislative gaps exposed on leaving the EU.

shortcomings and, in particular, its roots in Cold War-era civil defence.¹⁹ The overhaul saw responsibility shift from the Home Office to the new Civil Contingency Secretariat in the Cabinet Office. A public consultation on new legislation was launched in February 2001. This resulted in a draft bill which was the subject of pre-legislative scrutiny by a joint committee, as well as scrutiny by other select committees.²⁰

21. The Act is divided into two substantive parts:

- Part 1 places a series of duties on local bodies (Category 1 Responders) to assess the risk of an emergency and create and maintain plans for dealing with potential emergencies.
- Part 2 sets out how powers are conferred on the Government and in certain limited circumstances enable senior Government ministers to make regulations when an emergency has occurred or is about to occur.

22. Section 19 of the Act defines an emergency as:

- a) an event or situation which threatens serious damage to human welfare in the United Kingdom or in a Part or region;
- b) an event or situation which threatens serious damage to the environment of the United Kingdom or of a Part or region; or
- c) war, or terrorism, which threatens serious damage to the security of the United Kingdom.²¹

23. The Explanatory Notes to the CCA clarify that events “such as a terrorist attack, disruption of fuel supplies, contamination of land with a chemical matter and an epidemic could satisfy the definition, should they reach the required level of seriousness”.²²

24. To balance the exceptional powers that the CCA grants a government to respond to an emergency, as well as the broad definition of what constitutes such an emergency, the Act includes legal and Parliamentary oversight designed to prevent its inappropriate or disproportionate use. Emergency regulations made under Part Two of the Act must be laid “as soon as reasonably practicable”, and lapse after seven days from the day of laying unless a resolution approving the regulations is passed by each House. An emergency regulation, once made, lapses after 30 days, at which point the Government can re-introduce those regulations. Under s27 of the Act, Parliament can later annul or amend a regulation by resolution.

Legal arguments for and against using the CCA

25. Epidemics are included in the list of types of emergency for which the CCA might be utilised. However, in evidence to the Committee in April, the Chancellor of the Duchy of Lancaster said the circumstances were not appropriate for its use. The CCA, he argued,

19 These included fuel protests and severe floods in 2000 and the outbreak of Foot and Mouth disease in 2001 which followed in quick succession.

20 Joint Committee on the Draft Civil Contingencies Bill [Draft Civil Contingencies Bill](#) Session 2002–03, HL Paper 184/HC 1074.

21 [s. 19, Civil Contingencies Act 2004](#)

22 [Civil Contingencies Act 2004 Explanatory Notes](#) Section 1

is designed to address sudden, unanticipated events rather than the gradual onset of an epidemic:

the powers that [the CCA] confers upon Government are sweeping and it is specifically designed—and this was the clear advice—to be used when you have an unexpected bolt from the blue rather than when you have something that is, as we saw, a developing threat.²³

26. The Leader of the House had earlier made the same point in the Chamber:

Unfortunately, the Civil Contingencies Act would not have worked in these circumstances, because the problem was known about early enough for it not to qualify as an emergency under the terms of that Act.²⁴

27. Rt Hon Michael Gove MP, the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, suggested that that there was time for bespoke legislation to be passed by Parliament demonstrates that the CCA should not have been used. To do so would have left any measures made under it open to challenge.

There is a risk—the rule of law applies throughout—that using the CCA would have been and could have been challenged on the basis that its use was inappropriate in circumstances where some of the requirements for dealing with the Coronavirus were foreseen in advance.²⁵

28. Such an argument would appear to severely limit the circumstances in which the Act can actually be used. This interpretation has been rejected by one of those responsible for drafting the Act,²⁶ and when we asked the legal experts about the Government's argument, they all also took the view that the Government was incorrect in its reading of the Act. Professor Aileen McHarg, Professor of Public Law and Human Rights at Durham Law School, said it was not clear why the Government took this view of the Act, and that the COVID-19 emergency, and pandemic emergencies in general, clearly falls within this act. She set out that:

Section 19 clearly envisages an event that threatens severe damage to human welfare, including loss of human life and human illness, so it is within the scope of the Act.²⁷

29. The Institute for Government noted that the Coronavirus Act 2020 had two benefits:

- The Coronavirus Bill was subject to parliamentary scrutiny and subject to amendment; and
- The Coronavirus Act is not itself subject to judicial review (in contrast to regulations made under the Civil Contingencies Act.)²⁸

23 [Q216](#), the Work of the Cabinet Office. HC 118

24 [HC Deb 19 March 2020](#), C1178

25 [Q215](#). Jacob Rees Mogg made the same point. [HC Deb 19 March 2020](#), C1178

26 [HC Deb 23 March 2020](#) C117 (Andrew Mitchell MP), C118 (David Davis MP)

27 [Q40](#)

28 Institute for Government ([RRCC0012](#))

However, the use of the Coronavirus Act did allow the Government to avoid the safeguards of the Civil Contingencies Act. The IFG argued it would have been preferable to have “primary legislation with proper safeguards” instead of the Civil Contingencies Act.²⁹

30. In its written evidence, the Government said:

Although the measures in the Coronavirus Act were urgent, on this occasion there was time to pass conventional legislation, which allowed for prior Parliamentary scrutiny to the measures being introduced. The Civil Contingencies Act has strict tests (known as the “triple lock”) which must be met before emergency regulations under it can be made. In order to employ emergency powers, the three tests that must be passed are:

- that an emergency has occurred, is occurring or is about to occur;
- the provisions sought are necessary for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency;
- the need is urgent, and existing legislation and other means would risk serious delay.

This triple lock test ensures that it is only used when there are no other legislative options available to the Government and ensures that Parliamentary scrutiny is not unnecessarily sacrificed. In this case, there were other options available and, therefore, its use was not necessary or appropriate.³⁰

31. While the triple lock is there to ensure that the Government has to meet strict tests, at no point in this guidance or in the Act itself is potential legislation mentioned or time to pass legislation mentioned. The only reference is to existing legislation and other means risking serious delay. The decision to pass emergency COVID legislation would therefore appear to be a political one based on political preference and not on legal requirement.

32. In oral evidence, Katharine Hammond, Head of the Civil Contingencies Secretariat, argued that the spirit of the Act is that it should be used as a last resort only and that where a piece of legislation could be taken through Parliament instead, that ought to be done.³¹ In response to questioning, the Paymaster General, Penny Mordaunt, asserted that the decision not to use the Civil Contingencies Act was a legal, not political one.³² In a letter following up the evidence session, however, Ms Mordaunt stated that the use of the Coronavirus Act gave “greater legal certainty”: “CCA emergency regulations would have required parliamentary approval within seven days (if Parliament was still sitting), and could have been amended at that point; could have been struck down in the court as secondary legislation; and would have had to be renewed every 30 days”.³³

33. The Minister, Edward Argar MP, argued that the Civil Contingencies Act was not sufficient to cover all the powers that went into the Coronavirus Act. When asked about whether the Civil Contingencies Act could have been used as a “stop-gap” to facilitate

29 [Ibid](#)

30 Department of Health and Social Care ([RCC0017](#))

31 [Q115](#)

32 [Q116](#)

33 [Letter from the Paymaster General](#), 21 August 2020

more scrutiny of the Coronavirus Act:

The other point is that, although I do not think the CCA would have given the necessary powers even had it been deemed to do so as a stop-gap, there was no certainty—with Parliament going into recess at that point—about how long the so-called lockdown would last, and about when and if Parliament would be able to return anytime soon. Therefore, rather than relying on those powers, however imperfect, for a long time before Parliament might have been able to resume, it was felt important that Parliament had the opportunity early on to debate this. However truncated that process may have been, it was felt better to put that legislation through while Parliament was sitting, rather than to hold off and see whether Parliament might be able to sit in the future.³⁴

34. The Government's desire to find alternatives, such as bespoke primary legislation, to using the emergency provisions of the Civil Contingency Act 2004 is understandable. Bespoke primary legislation has the advantage of going through the stages of Parliamentary scrutiny. However, the Committee is not convinced that the Civil Contingencies Act could not have been used for COVID-19 and believes there was a potential role for the Civil Contingencies Act in providing a "stop-gap" for more detailed scrutiny of the Coronavirus Bill to take place." The potential use of the Civil Contingencies Act as a "stop-gap" should be considered by the Government in response to emergencies in the future. Furthermore, the Coronavirus Act does not have the same safeguards as the Civil Contingencies Act. It is troubling the Paymaster General referred to these safeguards as a reason not to use that Act. Any separate legislation to deal with civil contingencies—and particularly legislation that needs to be passed very quickly—should include safeguards and scrutiny provisions that are equivalent to those in the CCA, with regular renewal of powers allowing for more detailed Parliamentary scrutiny that, due to expediency, cannot be given during the passing of emergency legislation.

35. The Government's reticence to use the Civil Contingencies Act in response to a genuine national emergency calls into question how fit for purpose that legislation is.

Use of emergency procedures for lockdown regulations

36. All regulations covering "lockdown" have been introduced pursuant to, what we describe as an "urgent procedure", section 45R of the Public Health (Control of Diseases) Act 1984. Under this procedure, statutory instruments are made immediately and must be approved by both Houses within 28 days or they shall cease to have effect.³⁵ The decision to use the urgent procedure for the initial lockdown regulations, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, was accepted by witnesses to our inquiry.³⁶ There were arguable reasons for the use of the urgent procedure; the Government wished to time the introduction of lockdown as accurately as possible, to, for example, minimise lockdown fatigue and there was understandable uncertainty as to when exactly lockdown measures should be introduced.

34 [Q124](#)

35 [s. 45R, Public Health \(Control of Diseases\) Act 1984](#)

36 [Q26](#); [Q27](#)

37. The justification for passing further regulations, particularly regulations that eased lockdown restrictions, under the urgent procedure, is not so clear. Raphael Hogarth from the Institute for Government described some of the issues that arise from the use of the urgent procedure:

First of all, it leads to mistakes. If parliamentarians had had a chance to have a look at the first set of restrictions regulations they might have spotted things like the fact that there was a power for the police to enforce some of the restrictions with reasonable force but not others. They might have tidied that up. They might have raised concerns from constituents about certain reasons for going outside that might not have been covered by those regulations that maybe should be, like going to an ATM. That was subsequently inserted in amendment regulations.³⁷

38. Professor Aileen McHarg was more sympathetic to the Government's use of the urgent procedure, arguing that since lockdown regulations represented substantial restrictions on people's human rights, they should be loosened as soon as possible and that normal affirmative resolution procedures would not be appropriate because they would take too long.³⁸

The value of Parliamentary processes and scrutiny

39. Raphael Hogarth gave two arguments in favour of Parliamentary processes. First, he argued that Parliament helps provide legitimacy to emergency legislation because debate is held in public and people can hear the justifications for them. Second, it improves the effectiveness of legislation by giving interested parties an opportunity to identify problems in legislation and lobby MPs to seek to change them.³⁹

40. Limited Parliamentary scrutiny is not simply a mild inconvenience but often affects the quality of legislation. A prime example of potential legislative error arose in the first set of lockdown regulations.⁴⁰ Under Regulation six as originally enacted, it was an offence for a person to leave the place in which they were living without a reasonable excuse. This gave rise to a question of law, what happens once someone's reasonable excuse has expired? For example, one of the reasonable excuses was the need to obtain basic necessities such as food. If someone left their home to purchase food, were they compelled to immediately return home after purchasing the food?

41. It is not clear how a court would have interpreted this provision, but the uncertainty was great enough that the Government amended the regulation to make clear that the offence was intended to include both leaving and remaining outside a place where a person was living without reasonable excuse.⁴¹

42. These were not the only problems with coronavirus regulations. Both the regulations and the guidance have been criticised for a lack of clarity. For example:

- Judicial review was threatened by parents of children who have autism, who

37 [Q25](#)

38 [Q26](#)

39 [Q27](#)

40 [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#)

41 [The Health Protection \(Coronavirus, Restrictions\) \(England\) \(Amendment\) Regulations 2020](#)

needed to leave the house for exercise more than once a day and/or to be driven to a non-local area for their wellbeing.⁴²

- Domestic abuse charities expressed concern that the Regulations and guidance did not make it clear that leaving home due to the threat posed by an abusive member of the household was covered by the broad exception in reg. 6(m) “to avoid injury or illness or to escape a risk of harm”.⁴³
- Police were reported to be questioning shoppers for buying “non-essential” items despite this not being against the Regulations.⁴⁴
- A woman was fined £660 under the Regulations for “loitering” at Newcastle station but the finding was overturned when it became clear British Transport Police had used a provision that applied solely to infected persons.⁴⁵

43. The use of the urgent procedure has also impacted the timeliness of Parliamentary debate. The table below provides examples of when lockdown and face covering measures (excluding local lockdowns) were brought into force and when they were debated by Parliament.

Table 1: Dates of lockdown and face covering regulations and debates

Instrument	Entered into force	Date of House of Commons Debate/ approval
The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020	26th March 2020	4th May 2020/4th May 2020
The Health Protection (Coronavirus, Restrictions) (England) (Amendment) Regulations 2020	22nd April 2020	4th May 2020/4th May 2020
The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020	13th May 2020	10th June 2020/15th June 2020

42 <https://www.bindmans.com/news/government-guidance-changed-to-permit-people-with-specific-health-needs-to-exercise-outside-more-than-once-a-day-and-to-travel-to-do-so-where-necessary>

43 <https://www.womensaid.org.uk/covid-19-resource-hub/#1588945676184-75eccc4-b11d>

44 <https://www.bbc.co.uk/news/uk-52097797>

45 <https://www.thetimes.co.uk/article/police-fine-woman-660-for-breaching-coronavirus-lockdown-laws-at-train-station-5ftr9ql0f>

Instrument	Entered into force	Date of House of Commons Debate/ approval
The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020	1st June 2020	15th June 2020/15th June 2020
The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020	12th June 2020	Neither debated nor approved by the House of Commons. This instrument was revoked by the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations
The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020	15 June 2020	6 July 2020/ 7 July 2020
The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations	3rd July 2020	16th July/ 21 July 2020
The Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) Regulations 2020	11 July and 13 July 2020	20 July 2020/ 21 July 2020
The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020	18th July 2020	7 September 2020
The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020	24th July	Not yet debated by the House. The instrument was made after the House rose for the Summer Recess.

44. As the table above demonstrates, by the time that the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020 were debated, the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020 were already in force and the Amendment (No.4) regulations were never even debated in

the House of Commons, although they were debated in the House of Lords.⁴⁶

45. In relation to the regulations mandating the use of face coverings on public transport, plans for such legislation were announced by the Government on 4 June 2020.⁴⁷ But the relevant legislation, made on 15 June, was not debated in the House until 6 July.

46. Perhaps one of the starkest examples of less than timely scrutiny and information being made available are the regulations giving local authorities powers to tackle local outbreaks.⁴⁸ In oral evidence to us, Clara Swinson, Director General for Global and Public Health, Department of Health and Social Care, told us that local lockdowns “had been part of the Government’s strategy from the beginning”.⁴⁹ On 18 July, nearly four months after the first lockdown regulations were made, regulations giving local authorities the powers to help implement local lockdowns were made under the urgent procedure without any prior scrutiny.

47. In oral evidence Minister Edward Argar MP acknowledged that “when legislation goes through the proper parliamentary scrutiny, it is improved and is more likely to gain consent and compliance.”⁵⁰

48. The Committee is concerned by both the scale of legislation and the inability of Parliamentarians to effectively amend COVID-19 legislation. The scale of legislation, covering a large number of statutory instruments made under multiple sources, makes it very difficult for even experts to follow what legislation is in effect. Even more concerning is the fact that Members have no mechanism to amend this legislation which is being made under statutory instrument. All stages of the Bill were taken through the House of Commons in one sitting day. This means Members had just one sitting day to fully influence and amend the Coronavirus Act. Members have no power to amend statutory instruments made under that Act. As we detail below, Members have had no opportunity to meaningfully engage with and amend the lockdown regulations under the Public Health (Control of Diseases) Act 1984.

49. The current system of Parliamentary scrutiny in relation to lockdown regulations is not satisfactory. The fact that this legislation, which contains stark restrictions on people’s civil liberties, is not amendable by Members, made under the urgent procedure and therefore without parliamentary scrutiny or effective oversight, coupled with the extremely quick passing of the Coronavirus Act means the framework Parliamentary scrutiny of the Government’s handling of COVID-19 is inadequate.

50. Parliamentary processes and debates help to confer legitimacy upon policy changes made through emergency legislation, particularly when the legislation is so striking in its curtailment of liberties that would normally be taken for granted. Such debates also provide opportunities for parliamentarians to raise problems that exist in the legislation or guidance, be it on their own initiative or things that have been brought to their attention by constituents or by experts. *The Committee recommends that the Government gives higher priority to facilitating parliamentary scrutiny of such legislation in future.*

46 [HL Deb, 25 June, volume 804, col 393](#) [House of Lords]

47 [Face coverings to become mandatory on public transport, Department for Transport](#), 4 June 2020, UK.Gov

48 [The Health Protection \(Coronavirus, Restrictions\) \(England\) \(No. 3\) Regulations 2020](#)

49 [Q164](#)

50 [Q163](#)

51. **The use of the urgent procedure has not always been justified, particularly when the Government has announced that measures will be introduced some weeks in advance. Examples of this are provided by the regulations mandating the use of face coverings on public transport, which were announced on 4 June, introduced on 15 June but not debated until 6 July. It is unclear why the urgent procedure was necessary when the planned legislation was announced over a week before it was to come into force. It is even more unclear why debate was not possible until over a month after their announcement.**

52. **In the event the Government believes it is necessary for the urgent procedure to be used to make affirmative statutory instruments, it behoves it, especially with legislation as important to the national interest as lockdown measures, to schedule debates on those regulations in a much more timely fashion than it has so far in relation to COVID-19.**

53. The Government has made a welcome step towards improving the transparency of local lockdown regulations by publishing a framework containing draft options for local and regional lockdowns going forward.⁵¹ This framework contains explanatory notes on the sorts of restrictions that may be introduced in the future as well as draft regulations.

54. **The Committee strongly welcomes the Government's publication of draft legislation for implementing future local lockdowns similar to those in Greater Manchester or Leicester. This is a welcome improvement in transparency and facilitates parliamentary scrutiny of measures that may need to be introduced urgently in future. At a time when Government resources are understandably stretched, it is potentially beneficial for the Government to partially "outsource" some of the work on such legislation by publishing that legislation in draft. *The Government should seek to increase awareness of the existence of this draft legislation among parliamentarians, experts and other interested parties so that as wide a group as possible are able to provide feedback on the draft regulations.***

The framework of Parliamentary scrutiny under the Act

55. The following table summarises the main forms of Parliamentary scrutiny under the Coronavirus Act 2020.

51 [Draft options for regional or local coronavirus interventions](#), 24 July 2020, Department of Health and Social Care, Gov.uk

Table 2: Parliamentary scrutiny under the Coronavirus Act

Legislation	Timing	Requirement
Coronavirus Act, section 97	Every 2 months (beginning from the date the Act was passed).	<p>The Secretary of State must prepare and publish a report on the status of non-devolved provisions in Part 1 of the Act, which is laid before Parliament.</p> <p>The report must include a statement that the Secretary of State is satisfied that that status of those provisions is appropriate.</p>
Coronavirus Act, section 98	Every 6 months (beginning from the date the Act was passed)	<p>A Minister of the Crown must, as so far as is practical, make arrangements for a debate in the House of Commons on a motion within 7 sitting days of the expiry of a 6-month period.</p> <p>The motion is "That the temporary provisions of the Coronavirus Act 2020 should not yet expire."⁵²</p> <p>If the motion is negated, a Minister of the Crown must, under exercise their power under 90(1) to end the relevant temporary provisions not later than 21 days after the rejection took place.</p>
Coronavirus Act, section 99	Within the period of 14 Commons sitting days beginning with the day after the end of the sixth reporting period.	A Minister of the Crown must move a motion in neutral terms to the effect that the House has considered the one-year status report. This must be done in both Houses.

56. Witnesses to our inquiry generally did not believe that the framework for Parliamentary scrutiny was sufficiently strong. The Institute for Government described the framework as being "insufficient" for effective scrutiny alone.⁵³ Big Brother Watch described the Act as containing some of the most "draconian powers ever seen in peacetime Britain" and recommended that the powers exercised under the Coronavirus Act should be subject to sunsets of one month, akin to the operation of the Civil Contingencies Act.⁵⁴

52 This Act includes provisions that are "temporary" and not "temporary" for the purposes of the Act.

53 Institute for Government ([RRCC0012](#))

54 Big Brother Watch ([RCC0011](#))

57. The Government argued in its written evidence that the mitigating actions (such as regular reporting and debating) struck an effective balance between allowing the Parliament to hold the Government to account and not “preventing swift and necessary action being taken to combat the pandemic and support people through it”.⁵⁵

The six-monthly Parliamentary review

58. The Institute for Government said that six months “may be too long to wait for a parliamentary debate and vote” and suggested that if Parliamentarians identify problems with provisions within the Act, then “Parliament should be able to express a view on whether those provisions require amendment or expiry before the six-month mark.”⁵⁶ The mental health charity Mind raised concern at the fact that the six-monthly review was a vote to accept or reject all relevant temporary measures within the Coronavirus Act and suggested this approach should be modified “so that Parliament can meaningfully scrutinise the legislation and vote to remove powers which are no longer necessary.”⁵⁷

59. **The six-monthly Parliamentary reviews offer an opportunity for the House to debate the relevant temporary provisions within the Coronavirus Act 2020 but they do not allow the House to individually vote on whether specific provisions should continue or be repealed. The six-month reviews, therefore, while important and helpful, should be supported by more regular thematic debates. An example of such a debate could be on social care easements within the Act. *The Government should schedule thematic debates on provisions within the Coronavirus Act to provide the House with an opportunity to consider specific provision in greater detail. The motion for debate should be a substantive motion. While this motion would not be legally binding, it would allow for amendments and for the House to express a clear view.***

The two-monthly reports on the status of non-devolved provisions

60. One of the main points of interest in the inquiry was the two-monthly reports required under section 97.

61. Dr Ronan Cormacain, Senior Research Fellow at the Bingham Centre for the Rule of Law, described the reports as “useful but limited”. The reports provide information on what the provisions are and whether they are in force, but no further detail. Dr Cormacain argued that the report was not too helpful due to an absence of hard quantifiable data.⁵⁸

62. The Institute for Government argued that the reports should include:

- reasons and evidence for why the provisions should remain in force. The Government should not simply state whether the provisions should remain in force; and
- Basic quantitative evidence on the impact of using those provisions.

55 Department of Health and Social Care ([RCC0017](#))

56 Institute for Government ([RRCC0012](#))

57 Mind ([RCC0003](#))

58 [Q22](#)

The Institute for Government added that the Government (and Parliamentary Select Committees) should seek qualitative evidence from service providers and the Third Sector on the impact of these provisions “on the ground”.⁵⁹

63. Big Brother Watch argued that the two-monthly reports had a self-congratulatory tone and were concerned about the lack of “independent analysis of these measures.”⁶⁰ Raphael Hogarth expressed frustration that, in some ways, the reports were not partial enough and suggested that the Government should use the two-monthly to make its case for why the measures are necessary.⁶¹

64. The two-monthly reports on the status of non-devolved provisions, published under section 97, should be an important tool for scrutiny, but as currently structured, the reports do not give enough detail to enable Parliament, experts or the public to do this. *The Committee recommends that the Government includes in future reports evidence-based arguments for why the provisions continue to be necessary and quantitative evidence on the impact of using those provisions. If the Government is going to extend the relevant temporary provisions Coronavirus Act after the six-month point, it should consult briefly on what additional information to include in the two-monthly reports and strive to include this as soon as possible.*

59 Institute for Government ([RCC0012](#))

60 Big Brother Watch ([RCC0011](#))

61 [Q23](#)

3 The use of guidance and rule of law implications

65. The Government has not solely used legislation but also guidance to direct public behaviour. Throughout the COVID-19 pandemic, there have been instances of Government guidance or statements by Ministers failing to set out the law clearly, or in fact providing incorrect information as to what the law actually was. This chapter sets out examples of such instances but also some examples of where the Government has been clear about what is guidance versus what is legally required.

Examples of differences between guidance and the law

The first lockdown regulations

66. The first lockdown regulations were The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020.⁶² Under regulation six of that Statutory Instrument, it was an offence for someone to leave their home without a reasonable excuse, a non-exhaustive list of which was included in that same regulation. One of the reasonable excuses was a “need to take exercise.” No limit in either length or amount of exercise was prescribed in the legislation. However, the Government’s guidance published on 29 March on Gov.uk stated that people could engage in “one form of exercise a day”.⁶³

67. In a speech to the nation on 10 May 2020, the Prime Minister announced that people would be able take “unlimited amounts of exercise”. On 10 May, the Prime Minister said that people could now take unlimited amounts of exercise and could now sit in the sun in their local park. However, the Government did not actually make any changes to the legislation. Raphael Hogarth suggested that people could rely on the Prime Minister’s statement as a “reasonable excuse” for leaving their homes to sit in a park.

68. Dr Ronan Cormacain has criticised what he described as the Government mischaracterising what the actual law stated:

Do we have a society where a ministerial speech changes the meaning of the law? It would most likely be an abuse of process to be prosecuted for sunbathing if the Prime Minister said that sunbathing is lawful. But it is anathema to our idea of the Rule of Law if what the Prime Minister says becomes, by virtue of him saying it, the law.⁶⁴

This use of speech making to the nation, either through daily press briefings or such speeches from No.10, added to confusion as to what was guidance and what was actually law.

62 [The Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations 2020](#)

63 [Coronavirus outbreak FAQs: what you can and can't do, 29 March 2020, Institute for Government \(RRCC0012\)](#)

64 [Can I go to the park please Dad? Everyday lessons in legal certainty in the English Coronavirus Regulations, Ronan Cormacain, 15 May 2020](#)

The local lockdowns

69. The above was not an isolated example. On 30 July, the Government announced a local lockdown would be instituted in Greater Manchester, parts of West Yorkshire and East Lancashire. The Secretary of State for Health and Social Care said on Twitter:

...The spread is largely due to households meeting and not abiding to social distancing. So from midnight tonight, people from different households will not be allowed to meet each other indoors in these areas.⁶⁵

70. This was reported by the media as representing legally binding requirements.⁶⁶ But in reality, for several areas in the North of England, such as Greater Manchester, this was not true, there was no legislation introducing a local lockdown. Gatherings in gardens and people's homes had not in fact been banned. An admission that such legislation had not in fact been brought into force was available on UK.Gov which said:

The government will pass new laws to enforce the changes to meeting people in private homes and gardens.⁶⁷

71. The lockdown affecting parts of the North of England was not given legal effect until 5 August.⁶⁸ Even though the lockdown was simply guidance at that point, it was not properly possible for people to comply on the grounds that there were at that point an unknown number of exemptions to the rules; the Government simply said that those exemptions would be "legislated for".⁶⁹ This meant that people who believed they would have had a lawful excuse to break the supposed rule on gatherings could not have known for sure whether they were complying with the intended lockdown. The absence of proper guidance was particularly strange, because when they were finally published some days later, the exceptions to the restrictions on gatherings in public dwellings substantially mirrored the relevant exceptions found in the Health Protection (Coronavirus, Restrictions) (Leicester) Regulations 2020.⁷⁰

72. The Government misrepresenting the law undermines its own credibility when it asks people to follow particular courses of action. Dr Cormacain told the Committee that he had told the in-house lawyers of various companies that they should essentially ignore what the Government was saying and instead focus on what the rules actually were.⁷¹

73. This should not be taken as suggesting that there is no place for guidance as well as legislation, as the Minister of State at the Department of Health and Social Care, Edward Argar explained:

It is also important that what is put into legislation is deemed to be enforceable and practically useable in legislation. To take one example—possibly a controversial one—on the discussion around 1 metre or 2 metres

65 <https://twitter.com/MattHancock/status/1288931464168591371>, accessed 3 August 2020.

66 See for example, <https://mobile.twitter.com/bbcnwt/status/1289254627557306368?s=21>, BBC North West, 31 July 2020.

67 [North of England: local restrictions](https://www.gov.uk/government/news/north-of-england-local-restrictions), Gov.uk, accessed 3 August 2020.

68 [The Health Protection \(Coronavirus, Restrictions on Gatherings\) \(North of England\) Regulations 2020](https://www.gov.uk/government/consultations/the-health-protection-coronavirus-restrictions-on-gatherings-north-of-england-regulations-2020) SI. No. 828

69 [North of England: local restrictions](https://www.gov.uk/government/news/north-of-england-local-restrictions), Gov.uk, accessed 3 August 2020.

70 [The Health Protection \(Coronavirus, Restrictions\) \(Leicester\) Regulations 2020](https://www.gov.uk/government/consultations/the-health-protection-coronavirus-restrictions-leicester-regulations-2020), Those regulations included prohibitions on indoor gatherings, not just gatherings in private dwellings and so also included exceptions for attending funerals or care homes, which were not included in the North of England regulations.

71 [Q39](#)

for social distancing, the reality is that we could put it in law, but it would be very difficult to enforce what exactly was 2 metres—was someone a bit shy of it or at the right distance? One consideration is what is good law and can therefore be defined and enforced.⁷²

74. In an oral evidence held on 14 July, Minister Edward Argar MP did not accept that Ministers had in any way misled the public but accepted that, in a situation in which where changes have had to be made swiftly, there may be areas where guidance and legislation were blurred.⁷³

75. It would be wrong to suggest that the Government has never appreciated the difference between legislation and its own guidance. For example, in a statement to the House on 14 July 2020, the Secretary of State for Health and Social Care, Rt Hon Matt Hancock MP, informed the House that legislation would be introduced to make the wearing of face coverings in shops mandatory.⁷⁴ The Gov.uk website explained this would be a requirement from 24 July 2020.⁷⁵ This made it clear to the public that it was not yet a legal requirement but that it would be in a short amount of time. A similar course of action was taken in relation to the use of face coverings on public transport.⁷⁶

76. It is prudent of the Government not to seek to legislate for every eventuality, which would lead to a myriad of confusing, flawed and ultimately unenforceable provisions and exceptions. There is, therefore, a clear role for both guidance and legislation in response to the COVID-19 pandemic. This point notwithstanding, it is incompatible with the rule of law for the Government to misrepresent what the law actually is at any time. There have been disappointing examples of this misrepresentation during the pandemic, such as describing people in parts of the North of England as being “banned” from doing things that they were not yet banned from at all. Ministerial declarations to the public are not the same as legislation and in a Parliamentary democracy they should not be treated as such. *In future the Government should ensure its communications are clear as to whether something is guidance or whether it is a requirement under the law. An example of clearer communication has been over the use of face coverings in shops and public transport.*

77. The Government did not immediately set out the exceptions to the ban on gatherings in private dwellings in parts of the North of England but instead waited until it introduced the legislation. This is particularly strange when the exceptions relating to private dwellings substantially mirrored the relevant exceptions contained within the lockdown regulations for Leicester. Failing to explain the exceptions in good time risks causing confusion and compliance with what were, at that time, voluntary lockdown measures.

78. The Government's published draft legislation for implementing future local lockdowns (referred to in Chapter 2 of this report) should mean that it is easier to publish all information immediately when implementing new local lockdowns or relaxing local lockdowns slowly. However, the draft legislation should be viewed as a “living document” and should be updated as other responses are developed.

72 [Q162](#)

73 [Q161](#)

74 [Coronavirus Update](#), HC Deb 24 July, col. 1395

75 [Face coverings to be mandatory in shops and supermarkets from 24 July](#), 14 July 2020, UK.Gov

76 [Face coverings to become mandatory on public transport](#), Department for Transport, 4 June 2020, UK.Gov

4 Points of interest for the House for the six-monthly review

What is the six-monthly review?

79. Under the Coronavirus Act 2020, except for specific exempted provisions, the provisions within the Act will expire after two years of the Act's passing (this is often referred to as a "sunset clause"). This does not prevent Ministers from using powers granted under section 90 of the Act to cause provisions to expire earlier than the two year sunset. Provisions can also be extended for a maximum of an additional six months.⁷⁷

80. Under section 98 of the Coronavirus Act 2020, a Minister of the Crown must, so far as practicable, make arrangements for the motion to be debated and voted on by the House of Commons within a period of seven sitting days beginning immediately after each six month review period.⁷⁸ The wording of that motion is:

That the temporary provisions of the Coronavirus Act 2020 should not yet expire.⁷⁹

81. If that motion is negated, then a Minister of the Crown must exercise the power conferred by section 90(1) so as to ensure that the relevant temporary provisions expire not later than the end of the period of 21 days beginning with the day on which the rejection takes place.⁸⁰

82. The "relevant temporary provisions" mentioned above, include:

- provisions in the Act not listed in section 89(2) of the Act; and
- measures in respect of which a Minister of the Crown could make provision under section 90(1) (early expiry regulations) without the consent of the Welsh Ministers, the Scottish Ministers or a Northern Ireland department.⁸¹

What would happen if the House voted one way or the other?

83. To put this in plainer English, if the House approves the motion, then nothing will happen in respect to the Coronavirus Act 2020, the relevant temporary provisions will continue to have effect until at least the next six-monthly review. If the House negatives the motion, then a Minister of the Crown must ensure the temporary provisions of the Act expire within 21 days of that vote taking place. These provisions do not include areas that are clearly within devolved legislative competence but the removal of some UK-wide powers would have an effect on devolved administrations.⁸² This motion represents an "all or nothing" proposition: either all the temporary provisions are made to expire or none of them are. This means that the House cannot legally compel Ministers to ensure only certain provisions expire.

77 [Section 90, Coronavirus Act 2020.](#)

78 [Section 98\(3\), Coronavirus Act 2020](#)

79 [Section 98\(2\), Coronavirus Act 2020](#)

80 [Section 98\(1\), Coronavirus Act 2020](#)

81 [Section 98, Coronavirus Act 2020](#)

82 [Q50](#)

84. **The motion under section 98 of the Coronavirus Act 2020 is an “all or nothing” proposition. Under the terms of the motion, either all temporary provisions must be expired or none need to be. The House does not have any power under the Act to order Ministers to expire specific provisions under the Act.**

85. Notwithstanding the fact that the House cannot compel Ministers to cease particular temporary provisions, Ministers do still have the power to cause temporary provisions to expire sooner than the prescribed sunset clauses.⁸³ or alternatively the Government is able to suspend and revive provisions in the Act under section 88 of the Act.⁸⁴

86. **While the House does not have the power to compel Ministers to cause specific temporary provisions under the Coronavirus Act to expire, the powers Ministers have under the Act means that Members of the House can still use the six-monthly reviews to urge the Government to expire or at least suspend particular provisions that do not seem to be necessary at that time.**

87. **The resolution of the debate will not affect all coronavirus-related legislation. For example, “lockdown regulations”, are made under the Public Health (Control of Diseases) Act 1984 and would therefore not be legally affected by the six-monthly reviews. *The Government should set out clearly before the debate which legislation (and therefore which activities and aspects of the Government’s response to COVID-19) is not part of the Coronavirus Act and will not be affected by the debate and vote.***

Specific matters for potential consideration

88. Over the course of the inquiry, the Committee has received evidence relating to specific provisions within the Coronavirus Act. An overview of such submissions is provided below. As some of these matters are of a technical nature that might be considered more capably by colleagues on committees such as the Health and Social Care Committee or the Home Affairs Committee, this Committee has not sought to come to a view on them but instead notes them as potential areas of interest for Parliamentarians.

Health Provision

89. NHS Providers told us that the COVID-19 had posed the NHS with “its biggest challenge in a lifetime”, and the measures contained within the Coronavirus Act had assisted the NHS through the first peak of infection. NHS Providers suggested that the flexibility of measures in the Coronavirus Act would help the NHS respond to the backlog of planned care that has built up while also helping the NHS in the event of a second wave of infections.⁸⁵

90. Mind welcomed the fact that powers to introduce temporary changes to the Mental Health Act had not been turned on by the Government and the steps taken to enable mental health assessments to be done through remote assessments. Mind urged the Government to remove the temporary powers to change the Mental Health Act from the Coronavirus Act.⁸⁶

83 [Section 90, Coronavirus Act 2020](#)

84 [Section 88, Coronavirus Act 2020](#)

85 NHS Providers ([RRC0002](#))

86 Mind ([RCC0003](#))

91. Mind also expressed concerns about the temporary suspension of the local authority duty to provide adult social care, which they argued could significantly affect “access to vital social care support to people with mental health problems” They suggested that, since very few local authorities had used the provision, and “given existing flexibility within the Care Act”, the provisions should be “switched off” as a first step before removing them from the Coronavirus Act.⁸⁷

Powers of detention and dispersal

92. Big Brother Watch drew attention to schedules 21 and 22 of the Act, which contain broad powers of detention and dispersal respectively.⁸⁸ In relation to schedule 21, the July status reports indicates that these powers have been used fewer than 10 times.⁸⁹ They expressed frustration that there was no information about the actual use of the power in those cases but also that the report did not mention the fact that 53 (at the time of writing 100%) of prosecutions made under schedule 21 had been unlawful and argued that schedule 21 should be urgently repealed.⁹⁰

93. The July report also indicates that the powers under schedule 22 of the Coronavirus Act have not been used but instead that gatherings had been banned under lockdown regulations.⁹¹ Due to the fact that the power has not been used, Big Brother Watch strongly argued that schedule 22 should be repealed.

94. Paragraphs 74–79 of this report includes evidence relating to specific provisions within the Coronavirus Act that may be of interest to Parliamentarians for the six-monthly review. This includes powers under schedules 21 and 22 of the Act and powers relating to health provision and powers to modify the Mental Health Act.

Elections

95. Dr Alistair Clark, Reader in Politics at Newcastle University, submitted written evidence in relation to the postponement of local elections until May 2021. This would lead to a “bumper round of elections” with other local elections ordinarily scheduled for May 2021. Dr Clark asserted it was unclear as to why the elections had been postponed until May 2021, noting the Electoral Commission originally called for elections to be postponed until Autumn. He suggested the Committee should:

- request an explanation for the decision to postpone elections for a full year;
- examine the potential difficulties of holding such a large round of elections in May 2021, in particular the additional resources, time and other COVID-19 mitigations that are likely to be needed; and
- investigate the potential for permitting some council by-elections to be held in the run up to May 2021, thereby allowing local election services departments to gain some experience in how to operate any mitigations for COVID-19, or to

87 [Ibid](#)

88 [Big Brother Watch \(RCC0011\)](#)

89 [Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020: July 2020](#), Department of Health and Social Care, 31 July 2020.

90 [Big Brother Watch \(RCC0011\)](#)

91 [Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020: July 2020](#), Department of Health and Social Care, 31 July 2020.

highlight any issues with a view to learning lessons.⁹²

96. This Committee has an ongoing inquiry into the Work of the Electoral Commission. As part of that work, we will examine some of the implications of the Coronavirus Act on holding the postponed local elections in May 2021.

Relevant documents and information for the debate

Two-monthly report on the status of non-devolved provisions

97. Under section 97 of the Coronavirus Act, the Secretary of State must lay before Parliament every two months a report setting out the status of non-devolved provisions in the Act.⁹³ This includes whether provisions within the Act are actually in force or operation. It is helpful to be aware that not all measures in the Coronavirus Act are in fact in operation at this time. For example, as of July 2020, section 10 and schedule 8 of the Act, concerning temporary modifications of mental health and mental capacity legislation, are not yet in force.⁹⁴

98. Not all temporary provisions under the Coronavirus Act 2020 are in force. The Government's two-monthly reports, on the status of non-devolved provisions, are therefore an important resource for the debate.

Timing of six-monthly review and two-monthly report

99. The six-monthly Parliamentary review must take place within seven sitting days after the six-month review period. The Act received Royal Assent on 25 March and so the six-month period ends on 25 September 2020. The two-monthly reports under section 97 have been published at the end of the two-month periods. It is therefore not impossible for a six-month review debate to be scheduled before the most up-to-date two-monthly status report has been published.

100. The Government should take care to timetable the six-monthly review debate so that the two-monthly status report is published in good time before that debate takes place, ensuring Parliamentarians have the most up-to-date report to inform the debate.

Criteria for judging the Act

101. In its written evidence, the Institute for Government argued that the key test for whether provisions under the Act should continue to be in force is whether they are still necessary and the least harmful way to achieve objectives.⁹⁵ Dr Ronan Cormacain, from the Bingham Centre for the Rule of Law, suggested:

the key things I think you need are: what was the original justification for each individual measure? Why did we have that provision? Then the second

92 Dr Alistair Clark ([RCC0016](#))

93 [s.97, Coronavirus Act 2020](#)

94 [Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020: July 2020](#), Department of Health and Social Care, 31 July 2020.

95 Institute for Government ([RRCC0012](#))

question is: is that still justified? Then the third piece of information is: what is the evidence for the effectiveness of that provision?.⁹⁶

Professor Aileen McHarg, from Durham Law School, suggested there would be value in having the Government produce proper impact assessments of each measure in the Act.⁹⁷

102. Following the Committee's evidence session with Ministers and officials, the Chair wrote to the Government, urging it to commit to publishing information relating to:

- The original rationale for the temporary provisions in the Coronavirus Act;
- Why those provisions are still justified; and
- The evidence base to demonstrate that those provisions are still effective.

The Government did not respond to this suggestion.⁹⁸

103. It is vital that the temporary provisions in the Coronavirus Act are properly scrutinised and justified. The six-monthly review debate is one of the main avenues for this scrutiny to take place. To aid effective scrutiny and transparency, it is essential that the Government articulates: the original rationale for the temporary provisions in the Coronavirus Act, why those provisions are still justified and the evidence base for demonstrating those provisions are still effective. This should include provisions that are in force and those that are not. This will improve the transparency of these measures and help determine whether they are still necessary and proportionate. We recommend the Government publish this information in good time for the six-month review. This should be done at least two weeks before that debate takes place.

96 [Q17](#)

97 [Ibid](#)

98 [Letter from the Paymaster General](#), 21 August 2020; and [letter from the Minister of State for Health](#), 26 August 2020

Conclusions and recommendations

Scrutinising the Coronavirus Act 2020 and lockdown regulations

1. The governance arrangements for responding to COVID-19 have not always been clear. Press reports of a “quad” of Ministers making decisions in April raise questions of a parallel governance structure in addition to the formal Cabinet Committee structure. Such parallel systems risk creating silos where decisions are made without the full and proper discussion, advice or consultation that would be expected in Cabinet Committees. Any review of the Cabinet Office’s response to COVID-19 should include an examination of the governance arrangements for COVID-19, including COBR, the C-19 daily meetings, the “Quad” and Cabinet Committees. The Government must in its response to this report set out the governance arrangements and how decisions were made in response to COVID-19. (Paragraph 10)
2. The effectiveness of governance arrangements overseen by the Cabinet Office is something that will continue to be of interest to the Committee and form part of its future work programme. (Paragraph 11)
3. The Government’s messaging on who could continue to work was not as clear as it should have been. The closure of schools and definitions of “key workers” caused some industries to close that could have continued to operate, such as the construction industry. There should have been greater recognition within the Government’s messaging and guidance of workers who kept the economy going during lockdown. The Government must take care to ensure that its messaging is consistent and properly addresses all relevant audiences. (Paragraph 14)

The Government’s approach to legislation and the framework for Parliamentary scrutiny

4. As a result of the timescales involved and the political situation, detailed scrutiny of the Coronavirus Bill was not practical. It is therefore very important that Government is held to account for how it uses and justifies the continued application of the Act. In chapter 4 we set out some points of interest to the House for the first six-month Parliamentary review, particularly in relation to the information that the Government needs to provide to help facilitate effective Parliamentary scrutiny. (Paragraph 18)
5. The Government’s desire to find alternatives, such as bespoke primary legislation, to using the emergency provisions of the Civil Contingency Act 2004 is understandable. Bespoke primary legislation has the advantage of going through the stages of Parliamentary scrutiny. However, the Committee is not convinced that the Civil Contingencies Act could not have been used for COVID-19 and believes there was a potential role for the Civil Contingencies Act in providing a “stop-gap” for more detailed scrutiny of the Coronavirus Bill to take place.” The potential use of the Civil Contingencies Act as a “stop-gap” should be considered by the Government in response to emergencies in the future. Furthermore, the Coronavirus Act does not have the same safeguards as the Civil Contingencies Act. It is troubling the Paymaster General referred to these safeguards as a reason not to use that Act. Any

separate legislation to deal with civil contingencies—and particularly legislation that needs to be passed very quickly—should include safeguards and scrutiny provisions that are equivalent to those in the CCA, with regular renewal of powers allowing for more detailed Parliamentary scrutiny that, due to expediency, cannot be given during the passing of emergency legislation. (Paragraph 34)

6. The Government's reticence to use the Civil Contingencies Act in response to a genuine national emergency calls into question how fit for purpose that legislation is. (Paragraph 35)
7. The Committee is concerned by both the scale of legislation and the inability of Parliamentarians to effectively amend COVID-19 legislation. The scale of legislation, covering a large number of statutory instruments made under multiple sources, makes it very difficult for even experts to follow what legislation is in effect. Even more concerning is the fact that Members have no mechanism to amend this legislation which is being made under statutory instrument. All stages of the Bill were taken through the House of Commons in one sitting day. This means Members had just one sitting day to fully influence and amend the Coronavirus Act. Members have no power to amend statutory instruments made under that Act. As we detail below, Members have had no opportunity to meaningfully engage with and amend the lockdown regulations under the Public Health (Control of Diseases) Act 1984. (Paragraph 48)
8. The current system of Parliamentary scrutiny in relation to lockdown regulations is not satisfactory. The fact that this legislation, which contains stark restrictions on people's civil liberties, is not amendable by Members, made under the urgent procedure and therefore without parliamentary scrutiny or effective oversight, coupled with the extremely quick passing of the Coronavirus Act means the framework Parliamentary scrutiny of the Government's handling of COVID-19 is inadequate. (Paragraph 49)
9. Parliamentary processes and debates help to confer legitimacy upon policy changes made through emergency legislation, particularly when the legislation is so striking in its curtailment of liberties that would normally be taken for granted. Such debates also provide opportunities for parliamentarians to raise problems that exist in the legislation or guidance, be it on their own initiative or things that have been brought to their attention by constituents or by experts. The Committee recommends that the Government gives higher priority to facilitating parliamentary scrutiny of such legislation in future. (Paragraph 50)
10. The use of the urgent procedure has not always been justified, particularly when the Government has announced that measures will be introduced some weeks in advance. Examples of this are provided by the regulations mandating the use of face coverings on public transport, which were announced on 4 June, introduced on 15 June but not debated until 6 July. It is unclear why the urgent procedure was necessary when the planned legislation was announced over a week before it was to come into force. It is even more unclear why debate was not possible until over a month after their announcement. (Paragraph 51)
11. In the event the Government believes it is necessary for the urgent procedure to

be used to make affirmative statutory instruments, it behoves it, especially with legislation as important to the national interest as lockdown measures, to schedule debates on those regulations in a much more timely fashion than it has so far in relation to COVID-19. (Paragraph 52)

12. The Committee strongly welcomes the Government's publication of draft legislation for implementing future local lockdowns similar to those in Greater Manchester or Leicester. This is a welcome improvement in transparency and facilitates parliamentary scrutiny of measures that may need to be introduced urgently in future. At a time when Government resources are understandably stretched, it is potentially beneficial for the Government to partially "outsource" some of the work on such legislation by publishing that legislation in draft. The Government should seek to increase awareness of the existence of this draft legislation among parliamentarians, experts and other interested parties so that as wide a group as possible are able to provide feedback on the draft regulations. (Paragraph 54)
13. The six-monthly Parliamentary reviews offer an opportunity for the House to debate the relevant temporary provisions within the Coronavirus Act 2020 but they do not allow the House to individually vote on whether specific provisions should continue or be repealed. The six-month reviews, therefore, while important and helpful, should be supported by more regular thematic debates. An example of such a debate could be on social care easements within the Act. The Government should schedule thematic debates on provisions within the Coronavirus Act to provide the House with an opportunity to consider specific provision in greater detail. The motion for debate should be a substantive motion. While this motion would not be legally binding, it would allow for amendments and for the House to express a clear view. (Paragraph 59)
14. The two-monthly reports on the status of non-devolved provisions, published under section 97, should be an important tool for scrutiny, but as currently structured, the reports do not give enough detail to enable Parliament, experts or the public to do this. The Committee recommends that the Government includes in future reports evidence-based arguments for why the provisions continue to be necessary and quantitative evidence on the impact of using those provisions. If the Government is going to extend the relevant temporary provisions Coronavirus Act after the six-month point, it should consult briefly on what additional information to include in the two-monthly reports and strive to include this as soon as possible. *The Committee recommends that the Government includes in future reports evidence-based arguments for why the provisions continue to be necessary and quantitative evidence on the impact of using those provisions. If the Government is going to extend the relevant temporary provisions Coronavirus Act after the six-month point, it should consult briefly on what additional information to include in the two-monthly reports and strive to include this as soon as possible.* (Paragraph 64)

The use of guidance and rule of law implications

15. It is prudent of the Government not to seek to legislate for every eventuality, which would lead to a myriad of confusing, flawed and ultimately unenforceable provisions and exceptions. There is, therefore, a clear role for both guidance and legislation in

response to the COVID-19 pandemic. This point notwithstanding, it is incompatible with the rule of law for the Government to misrepresent what the law actually is at any time. There have been disappointing examples of this misrepresentation during the pandemic, such as describing people in parts of the North of England as being “banned” from doing things that they were not yet banned from at all. Ministerial declarations to the public are not the same as legislation and in a Parliamentary democracy they should not be treated as such. In future the Government should ensure its communications are clear as to whether something is guidance or whether it is a requirement under the law. An example of clearer communication has been over the use of face coverings in shops and public transport. (Paragraph 76)

16. The Government did not immediately set out the exceptions to the ban on gatherings in private dwellings in parts of the North of England but instead waited until it introduced the legislation. This is particularly strange when the exceptions relating to private dwellings substantially mirrored the relevant exceptions contained within the lockdown regulations for Leicester. Failing to explain the exceptions in good time risks causing confusion and compliance with what were, at that time, voluntary lockdown measures. (Paragraph 77)
17. The Government's published draft legislation for implementing future local lockdowns (referred to in Chapter 2 of this report) should mean that it is easier to publish all information immediately when implementing new local lockdowns or relaxing local lockdowns slowly. However, the draft legislation should be viewed as a “living document” and should be updated as other responses are developed. (Paragraph 78)

Points of interest for the House for the six-monthly review

18. The motion under section 98 of the Coronavirus Act 2020 is an “all or nothing” proposition. Under the terms of the motion, either all temporary provisions must be expired or none need to be. The House does not have any power under the Act to order Ministers to expire specific provisions under the Act. (Paragraph 84)
19. While the House does not have the power to compel Ministers to cause specific temporary provisions under the Coronavirus Act to expire, the powers Ministers have under the Act means that Members of the House can still use the six-monthly reviews to urge the Government to expire or at least suspend particular provisions that do not seem to be necessary at that time. (Paragraph 86)
20. The resolution of the debate will not affect all coronavirus-related legislation. For example, “lockdown regulations”, are made under the Public Health (Control of Diseases) Act 1984 and would therefore not be legally affected by the six-monthly reviews. The Government should set out clearly before the debate which legislation (and therefore which activities and aspects of the Government's response to COVID-19) is not part of the Coronavirus Act and will not be affected by the debate and vote. (Paragraph 87)
21. Paragraphs 74–79 of this report includes evidence relating to specific provisions within the Coronavirus Act that may be of interest to Parliamentarians for the six-

monthly review. This includes powers under schedules 21 and 22 of the Act and powers relating to health provision and powers to modify the Mental Health Act. (Paragraph 94)

22. Not all temporary provisions under the Coronavirus Act 2020 are in force. The Government's two-monthly reports, on the status of non-devolved provisions, are therefore an important resource for the debate. (Paragraph 98)
23. The Government should take care to timetable the six-monthly review debate so that the two-monthly status report is published in good time before that debate takes place, ensuring Parliamentarians have the most up-to-date report to inform the debate. (Paragraph 100)
24. It is vital that the temporary provisions in the Coronavirus Act are properly scrutinised and justified. The six-monthly review debate is one of the main avenues for this scrutiny to take place. To aid effective scrutiny and transparency, it is essential that the Government articulates: the original rationale for the temporary provisions in the Coronavirus Act, why those provisions are still justified and the evidence base for demonstrating those provisions are still effective. This should include provisions that are in force and those that are not. This will improve the transparency of these measures and help determine whether they are still necessary and proportionate. We recommend the Government publish this information in good time for the six-month review. This should be done at least two weeks before that debate takes place. (Paragraph 103)

Formal minutes

Tuesday 8 September 2020

Members Present

Mr William Wragg in the Chair

Ronnie Cowan	Tom Randall
Jackie Doyle-Price	Lloyd Russell-Moyle
Rachel Hopkins	Karin Smyth
Mr David Jones	John Stevenson
David Mundell	

Draft Report (*Parliamentary Scrutiny of the Government's handling of COVID-19*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 103 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

[Adjourned till Thursday 10 September 2019 at 1.55pm]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 16 June 2020

Raphael Hogarth, Associate at Institute for Government; **Dr Ronan Cormacain**, Senior Research Fellow, Bingham Centre for the Rule of Law, British Institute of International and Comparative Law; **Professor Aileen McHarg**, Professor of Public Law and Human Rights, Durham Law School

[Q1–60](#)

Tuesday 23 June 2020

Michael Russell MSP, Cabinet Secretary for Constitution, Europe and External Affairs, Scottish Parliament; **Jeremy Miles MS**, Counsel General for Wales and Minister for European Transition, Welsh Government; **Gordon Lyons MLA**, Junior Minister, the Executive Office, Northern Ireland Assembly

[Q61–109](#)

Tuesday 14 July 2020

Rt Hon Penny Mordaunt MP, Paymaster General, Cabinet Office; **Edward Argar MP**, Minister of State, Department of Health and Social Care; **Katherine Hammond**, Head of the Civil Contingencies Secretariat, Cabinet Office; **Clara Swinson**, Director General, Global and Public Health, Department of Health and Social Care

[Q110–188](#)

Thursday 23 July 2020

Emma Norris, Director of Research, Institute for Government; **Dr Alistair Stark**, School of Political Science and International Studies, University of Queensland; **Jason Beer QC**, Specialist in public inquiries, inquests, police law, and regulatory law

[Q189–217](#)

Dame Una O'Brien DCB, Former Permanent Secretary for Health and Panel Member of Renewable Heat Incentive Inquiry; **Sir Robert Francis**, Chair, Mid Staffordshire NHS Foundation Trust Public Inquiry; **Lord Butler of Brockwell**, Chair, Review of Intelligence on Weapons of Mass Destruction; **Baroness Prashar**, Committee member, Iran Inquiry

[Q218–268](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

RCC numbers are generated by the evidence processing system and so may not be complete.

- 1 A1 ([RCC0026](#))
- 2 Abrahamson, Elkan ([RCC0025](#))
- 3 Big Brother Watch ([RCC0011](#))
- 4 British Medical Association (BMA) ([RCC0029](#))
- 5 Collyer, Mr Adam ([RCC0005](#))
- 6 The Consultation Institute ([RCC0013](#))
- 7 Department of Health and Social Care ([RCC0017](#))
- 8 Groenewegen BEM, S.J. ([RCC0020](#))
- 9 Hampshire and Isle of Wight Local Resilience Forum ([RCC0006](#))
- 10 Hardy, Ms Chloe ([RCC0022](#))
- 11 Institute for Government ([RCC0027](#))
- 12 Institute for Government ([RCC0024](#))
- 13 Institute for Government ([RCC0012](#))
- 14 Institute of Civil Protection and Emergency Management (ICPEM) ([RCC0004](#))
- 15 Mind (Rhea Newman, Senior Parliamentary Officer) ([RCC0003](#))
- 16 Newcastle University (Dr Alistair Clark, Reader in Politics) ([RCC0016](#))
- 17 NHS Providers (Mrs Susan Bahl, Head of Policy and Public Affairs) ([RCC0002](#))
- 18 OTHO UK (Mr Anthony Thompson, Director) ([RCC0010](#))
- 19 Parliamentary and Health Service Ombudsman ([RCC0021](#))
- 20 Professor Aileen McHarg ([RCC0028](#))
- 21 Southampton Law School (Dr Alun Gibbs, Associate Professor in Public Law) ([RCC0009](#))
- 22 Southampton Law School (Dr Asif Hameed, Lecturer in Law) ([RCC0009](#))
- 23 Trendall, Mr Philip ([RCC0015](#))
- 24 Trendall, Philip ([RCC0023](#))
- 25 UK Anti-Corruption Coalition, and Transparency International UK ([RCC0019](#))
- 26 University of Birmingham (Mr James Tudor-White, Scholar) ([RCC0007](#))
- 27 University of Queensland (Dr Alastair Stark, Senior Lecturer) ([RCC0018](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

First Report	Appointment of Rt Hon Lord Pickles as Chair of the Advisory Committee on Business Appointments	HC 168
Second Report	Parliamentary and Health Service Ombudsman Scrutiny 2018–19	HC 117
Third Report	Delivering the Government's infrastructure commitments through major projects	HC 125
First Special Report	Electoral law: The Urgent Need for Review: Government Response to the Committee's First Report of Session 2019	HC 327