House of Commons

Public Administration and Constitutional Affairs Committee

Parliamentary Scrutiny of the Government's handling of Covid-19: Government Response to the Committee's Fourth Report of Session 2019–21

Fifth Special Report of Session 2019–21

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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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Committee reports are published on the Committee's website and in print by Order of the House.

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Fifth Special Report

The Public Administration and Constitutional Affairs Committee published its Fourth Report of Session 2019–21, Parliamentary Scrutiny of the Government's handling of Covid-19 (HC 377) on 10 September 2020. The Government's response was received on 3 December 2020 and is appended to this report.

Appendix: Government Response

Letter from Lord Bethell, dated 3 December 2020

Over and above the Department's formal response to your report, I wanted to add my own personal assurance of our regard for Parliament—both parliamentary process and Parliamentarians alike. As a Department, we have sought to respect Parliament and work within the legal frameworks presented to us.

You will be aware of the large number of debates and cross-party briefings that have taken place on this issue, by a range of Ministers. Since the beginning of March, in both the Commons and the Lords, on Covid-19, there have been:

- 20 oral statements
- 7 General Debates on Covid-19
- 2 Lords debates
- 60 SI debates (35 Commons, 25 Lords)
- 21 Lords Oral questions
- 17 Lords topical questions
- 6 Commons oral question sessions
- 6 Westminster Hall debates

We have also held dozens of regular cross-party briefing calls to keep Parliamentarians updated on the latest Covid-19 data and measures throughout the pandemic. Not to mention Committee appearances, written PQs and various other correspondence. I hope this illustrates the Government's commitment to ensuring as much parliamentary scrutiny as has been possible in the circumstances.

These are unprecedented times, and the urgency and complexity of various issues as part of our pandemic response has no doubt tested us all, not least our process for regulations. As we stated in our response, '*The affirmative procedure generally takes six to eight weeks, and although steps can be taken to shorten this where appropriate, this is a matter not solely in the Government's gift.*' This is, however, a public health emergency and being able to effectively tackle the virus and save lives means the Government must act with speed when required. There have been incidences during the course of the pandemic where we have had to proceed with urgent regulations in the national interest where we could not have accommodated usual parliamentary timelines.

I can assure you however that we recognise the need for timely scrutiny, which is why we recently committed to, where possible, holding votes on measures of national significance before they come into force. This is the approach we took with the recent tiers regulations and the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations that implement the current lockdown.

We value the role of Parliament and will continue to work with Parliament to ensure it has opportunities to appropriately scrutinise our ongoing response to the pandemic.

DHSC Response to the Public Administration and Constitutional Affairs Committee report on the Parliamentary Scrutiny of the Government's handling of COVID-19

Introduction

The Government welcomes the Committee's report and is grateful for the scrutiny it brings.

The second wave of COVID-19 continues to impact the health of the nation, as well as the economy. As we emerge from a second national lockdown on 2 December 2020 into a revised Tier structure, the country is poised to embrace easements in readiness for Christmas.

This document sets out the Government's response to the Public Administration and Constitutional Affairs Committee (PACAC) report on the 'Parliamentary Scrutiny of the Government's handling of COVID-19'. This is the Committee's Fourth report published as part of the PACAC's ongoing inquiry 'Responding to COVID-19 and the Coronavirus Act 2020', which was launched in May 2020 to scrutinise the constitutional and public administration aspects of the Act and other COVID-19 legislation, to support and inform the future debates when the legislation returns to Parliament. The following response outlines the Government's consideration of the recommendations made within the report.

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)

The structures underpinning the Government's response to the COVID-19 pandemic have evolved over time. The virus appeared on 31 December 2019 and, within the first few days of January 2020, actions to respond to the threat had already begun in the Department of Health and Social Care (DHSC) and the Chief Medical Officer (CMO) had been engaged. By mid-February, both the Cabinet and COBR had been convened to discuss the threat of the novel coronavirus and the Government's contingency plans.

COBR is the mechanism through which the Government makes decisions in emergencies. It played its role at the start of this crisis, acting as a central mechanism for taking real

time decisions to coordinate the UK's operational response. Throughout January to mid-March, there were regular COBR meetings overseeing preparedness and implementation of measures to respond to a potential novel-Coronavirus pandemic.

Four Ministerial Implementation Groups (MIGs) were created on 17 March. The MIGs were a set of ministerial committees which considered specific issues and ministers holding relevant policy responsibilities attended. These four committees focused on healthcare, the general public sector, economic and business, and international response. The four committees were chaired by Health Secretary Matt Hancock, Chancellor of the Duchy of Lancaster Michael Gove, Chancellor of the Exchequer Rishi Sunak and Foreign Secretary Dominic Raab respectively. They were tailored to coordinate a widening of the response to the coronavirus pandemic across Government, incorporating policy and strategy.

The MIGs fed into a daily Strategy meeting, chaired by the Prime Minister. During this period COBR meetings continued to be convened to take decisions as needed. The MIGs met regularly in the first phase of the Government's COVID-19 response effort but were always intended to operate as an interim governance structure. These 'implementation committees' were replaced by two new Covid-19 related cabinet committees in June 2020: 'COVID-19 Strategy' and 'COVID-19 Operations'. The PM chairs the COVID-19 Strategy (COVID-S) Committee to drive the Government's strategic response to COVID-19: considering the impact of the virus; the response to it; and setting the direction for the recovery strategy. The Chancellor of the Duchy of Lancaster chairs the COVID-19 Operations (COVID-O) Committee, to deliver the policy and operational response to COVID-19.

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 had always and continues to make every effort to communicate any and all changes to COVID-19 policy to the public as clearly and simply as possible.

When national restrictions were introduced in March, the Government published guidance detailing which businesses should close and the employment and financial support available for employees on the gov.uk website. This was amplified via a public information campaign, utilising multiple national and local channels from outdoor advertising to social media, to ensure awareness of all regulations.

With respect to the construction industry and its supply chains, the Government has been clear they should remain operational throughout the COVID-19 outbreak, subject to compliance with Public Health England guidelines. On 31 March, the Secretary of State for Business, Energy and Industrial Strategy (BEIS) set out this position in an open letter to the construction industry. The letter was circulated via the Construction Leadership Council to a wide range of trade and professional associations for onward circulation. The Government's position on the operation of the construction industry has remained unchanged throughout the pandemic.

When restrictions eased during May 2020 and businesses across all sectors began reopening, the Government provided "working safely" guidance on gov.uk and highlighted this guidance through paid, owned and earned media and digital channels. Throughout the pandemic, the Government have been clear that all workplaces need to follow the COVID-secure guidelines.

On 22 September, the Government published new guidance in order to help contain the virus, which set out that office workers who could work effectively from home should do so over the winter. Where an employer, in consultation with their employee, judges an employee can carry out their normal duties from home they should do so. Public sector employees working in essential services, including education settings, should continue to go into work where necessary. Anyone else who cannot work from home should go to their place of work. The risk of transmission can be substantially reduced if COVID-19 secure guidelines are followed closely. Extra consideration should be given to those people at higher risk.

The aim of the Government's approach to school closures was to limit the number of children and staff in school to prevent the spread of the virus whilst ensuring that critical services can continue to function, and vulnerable children continued to be cared for. This policy required cooperation between employers, parents and headteachers. Businesses were expected to implement Business Continuity Arrangements to maintain essential public services and to support workers they identify as critical. Departments were ready to support their sectors in identifying who is critical, based on the principles set out in the guidance.

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)

The Civil Contingencies Act (CCA) is designed to be used only as a last resort, where it is not possible to take conventional or accelerated primary legislation through Parliament, and thereby to allow Parliamentary scrutiny before measures pass into law. The CCA has strict tests (known as the "triple lock") which must be met before emergency regulations under it can be made. These are not in place to prevent its use at all costs, but a test that ensures that Parliamentary scrutiny is not unnecessarily sacrificed.

In this instance, although the measures in the Coronavirus Act were urgent, the Government believed it was both important and possible in the timeframe to provide an opportunity for prior Parliamentary scrutiny for the Coronavirus Act. That was thought to be preferable to making regulations under the CCA, where Parliamentary debate would take place after the legislation had come into force. It provided an opportunity to make the legislation subject to such review as Parliament thought fit, with an agreed renewal of powers.

This approach also provided greater legal certainty for the government and other agencies who were responding to the pandemic as CCA 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, therefore not a straightforward stop-gap approach.

The Government still believes that was the right approach. Parliament went into recess shortly after the Coronavirus Act was passed and then changed its business arrangements in order to protect Parliamentarians and their staff, thereby limiting the opportunity for retrospective debate and repeat approvals. To provide accountability, the Act requires that the Government has the following statutory obligations:

a) the House of Commons have to approve the continued operation of the Act's temporary provisions within the period of 7 sitting days after the 6-month anniversary of the Act's passing and every six months thereafter if the temporary provisions still exist; and

b) the Government is be required to report every two months on the use of powers under the Act for as long as they remain in force.

We believe that there are sufficient safeguards and opportunities built into the legislation for Parliament to scrutinise the Government's actions. It is important to note that, once enacted, the lifespan of this Act and the measures in it, is limited. It will only be in force for as long as necessary to deal with the Coronavirus. Parliament has drawn limits to the scope and time period for which these powers are required. A two-year life span for this Act has been chosen to ensure that its powers remain available for a reasonable length of

time, with the option for the provisions in the Act to be extended by the relevant national authority. Not all powers have been enacted yet but this may change, as they may be needed in due course within this pandemic.

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)

The Government notes the Committee's concerns. There has been a significant amount of COVID-19 legislation in a relatively short space of time, so to aid accessibility all COVID-19 legislation has been collated at: https://www.legislation.gov.uk/coronavirus.

More widely, we would like to reassure the Committee that there will continue to be a wide range of opportunities for Members to hold the Government to account for the handling of the Coronavirus pandemic, including general debates and oral statements in the usual way. Ministers have listened carefully to Members' contributions made in debates on regulations, and although that has not—as unfortunately it could not—resulted in any amendment to the set of regulations at issue, that input is taken into consideration as the policy has evolved over time. The flexibility shown on all sides of the House in adapting procedures and processes to fit these changing circumstances has been vital in achieving an optimal balance between speed and scrutiny.

During the six-month review debate (30th September 2020) on the Coronavirus Act, it became clear that Members were not unduly concerned by the use of regulation making

powers in that Act. We are not aware that Parliament's scrutiny committees have expressed significant concerns either. The legislation that seems to raise the most concerns are the regulations made under the Public Health (Control of Diseases) Act 1984, using the emergency procedure expressly created by that Act for precisely the kind of situation that we face today.

HMG acknowledge that throughout this crisis the need to act swiftly to implement measures when they can be at their most effective is a prime consideration for the timing of bringing these regulations into force. Nonetheless, the Secretary of State for Health and Social Care committed, in that six-monthly debate, that Parliament would be afforded the opportunity, where practicable, to debate the motion to approve regulations of national significance before they come into force. This has been used successfully with the Local Covid Alert Level (or tiering) regulations, which were made and laid on 12 October, debated and approved by the House of Commons on 13 October, and came into force on 14 October. Further to this, on Tuesday 3 November Parliament was given the opportunity to debate the most recent national restriction regulations, before they came into force and the latest regulations relating to Tiers will also be debated on 1 December. We intend to maintain this approach, whenever circumstances permit.

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)

These are unprecedented times and the virus moves quickly, so we need to have the powers at our disposal to respond immediately. It is deeply important that we strike the right balance between acting at pace and proper scrutiny. The Health Secretary has said that for significant national measures which effect the whole of England or are UK-wide, we will consult Parliament and, wherever possible, will hold votes before such regulations come into force. Responding to the virus means that the Government must act with speed when required, and we cannot hold up urgent regulations that are needed to control the virus and save lives.

It is important to note that in the instance of face coverings being mandated on public transport (June 15), this was the first such legal requirement for them to be worn by members of the public. As such, the usage and ownership of face coverings was not widespread at that time and we prioritised an early announcement in order to allow people maximum time to obtain them before the regulations came into effect.

Decision-making has necessarily required complex judgements to be taken on the appropriate measures to adopt in line with constantly evolving scientific advice, and the ability of affected industries and the public to adapt to the new face coverings requirements. Even where a decision of broad principle has been able to be announced in advance of the Regulations being made to enable the public to prepare—as was the case with these Regulations—it is important not to conflate that broad principle with the working through of the detail as to what sort of indoor venues should be included and which ought or need

not be, based upon the scientific evidence and advice as it develops, or the mechanisms by which face coverings might be most effectively made mandatory on public transport. This reflects the exceptional weight to be given to measures needed to enable life to be protected, but only insofar as is proportionate.

The draft affirmative procedure generally takes six to eight weeks, and although steps can be taken to shorten this where appropriate, this is a matter not solely in the Government's gift. This was the case in each of these regulations, and the Government is confident it acted in accordance with the law, including with respect to the procedure under section 45R. Parliament continues to exercise other important forms of accountability over executive action (e.g. Prime Minister's Questions and reports from the Joint Committee on Human Rights and the Joint Committee on Statutory Instruments). The use of the section 45R procedure was, in the case of both Regulations, lawful and rational. The regulations have been made using powers approved by Parliament and have been used appropriately.

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)

The Government does seek to provide as much notice and opportunity for scrutiny as possible, but the rapid changes in disease transmission rates means that due to timing, we are not always able to make use of draft legislation to facilitate the sort of consultation we would ideally like to have. However, the transition into a Tiers structure, to provide more certainty to areas, replaced the need for draft legislation to implement future local lockdowns. The development and publication of the COVID-19 Winter Plan was a good example of how we have set out the policy in advance, confirmed geographies based on latest data, laying the legislation with debates and approval in advance of coming into force. The Government aims to give as much parliamentary engagement as possible ahead of the introduction of legislation. Indeed, the contents of the Coronavirus Act were agreed and cleared across Government and with the DAs with extensive engagement with the Opposition and other parties ahead of the Act's passage through Parliament. We continue to make use of JBC, office of CMO and policy leads to obtain as best feedback as possible.

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)

The Coronavirus Act commanded widespread support at the time of its passing and during the six-monthly debate, as an important source of support for our citizens and for the services they rely on, during this grave and challenging national emergency. The current system of scrutiny, as set out in part 2 of the Act, was designed to meet the needs of Parliament and the public.

Significant time has been allowed for debates in both Houses on a variety of Coronavirus topics such as mental health provisions, the effects of the pandemic on business and the effect of the pandemic on the high street. Some of these have stemmed from the consideration of specific legislation and some from more general concerns. In addition, scrutiny at departmental question time, when Ministers give oral statements and by select committees all ensure that these issues are given a thorough and public airing.

Since the beginning of March, in the Commons and the Lords, there have been (relating to Covid-19): 20 oral statements; 7 General Debates on Covid-19; 2 Lords debates; 60 SI debates (35 Commons, 25 Lords); 21 Lords Oral questions; 17 Lords topical questions; 6 Commons oral question sessions; 6 Westminster Hall debates. The Government has also held dozens of regular cross-party briefing calls to keep Parliamentarians updated on the latest Covid-19 data and measures throughout the pandemic.

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.*** (Paragraph 64)

The Government recognises the need for two monthly reports to be in a timely manner and ensure the inclusion of evidence-based arguments. We are considering what other information would be helpful to include in future reports and taking into consideration feedback when drafting these. We have published such an analysis—at the Committee's suggestion—in good time for the first six-month debate. We intend to do so for the other anniversary debates. In doing so, we have built upon our two-month reports to Parliament, which already set out in detail what each provision does, how it is used, and why it is deemed necessary during and at the end of each reporting period.

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)

HMG notes the Committee's concerns and recognises that there has, on occasion, been an interval between the announcement of changes, and the making of the regulations that—at least in part—underpin those changes. We acknowledge this and will continually strive to ensure that future announcements are made in good time. We also recognise the difference between guidance given and the law it supports and will strive to ensure appropriate wording and clarity is given in future. Nonetheless, the purpose of these changes is to protect the public's health, not to criminalise individuals, and we therefore encourage adherence to the range of actions that the public must take. The clarity of messaging has greatly increased over time as a direct result of how the understanding of the scientific evidence has increased. For example, it was only when the scientific evidence on the benefit of wearing face masks became clear that regulations and therefore messaging was reinforced. However, we still continue to face difficulties in balancing the need for swift action and testing the clarity of communication.

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)

The Government shares the Committee's view that, notwithstanding the exact wording of section 98, Members of the House should use the six-monthly reviews to raise issues and concerns and seek to press Ministers to take a different course. This is what happened during the first six-month debate, when the Secretary of State for Health and Social Care undertook to consider the very many representations from across the House urging him to sunset early the provisions in the Coronavirus Act that allowed Ministers to make temporary changes to the 1983 Mental Health Act. That Instrument was laid before Parliament in October.

The Government's view is that the integrated package of support that the Act provides—for tenants, businesses, returning clinicians, employees, the sick, and the vulnerable—requires a degree of political and legal certainty that a 'pick and choose' motion would fatally undermine. However, as the example outlined above demonstrates, necessary limitations of format do not prevent Parliament from expressing its will, nor from seeing it carried through into policy change.

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)

The Government recognises the Committee's concerns and hopes that the briefings and analyses provided before the debate made clear the statutory basis of the changes brought about under the Coronavirus Act. The range of policies and interventions brought in under the Public Health (Control of Diseases) Act 1984 is a matter not just of public record but also made explicit in the material presented to Parliament as these Instruments are laid before it. We note also that the House of Commons Library service have also provided extensive briefings for Members to guide them through the legislative basis of the Government's response, to lockdown in particular. (https://commonslibrary.parliament.uk/research-briefings/cbp-8875/)

It should also be noted that most instruments relating to lockdown restrictions and subject to the made affirmative procedure, in accordance with the requirements of the parent act, are debated by both Houses, and are made subject to obtaining the approval of both

Houses. Furthermore, the Secretary of State for Health and Social Care has made clear that, wherever possible, Regulations of significant national import will be debated and approved by Parliament before they come into force.

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)

In addressing this recommendation, and the concerns of MIND (in Paragraph 91), the Government would like to assure the Committee that the temporary modifications to the Mental Health Act 1983, allowed for by the Coronavirus Act 2020, were designed to only be used if the mental health sector was experiencing unprecedented resource constraints resulting from the pandemic.

During the six-month debate in the House of Commons on 30 September, the Secretary of State for Health and Social Care announced the removal of the Mental Health Provisions under Section 10 (Schedule 8) in their entirety in relation to England. The provisions relating to patients involved in the criminal justice system will also be removed in Wales. The regulations have been laid before both Houses and debated in Commons on 18 November and Lords on 25 November. These provisions have not been required due to the commitment and resilience of NHS staff and a number of adaptations that have been made. Adaptions include legal guidance which sets out how the Act's Code of Practice can be interpreted during this period (such as the delivery of statutory forms electronically and use of video technology for medical assessments). As a result, the Government believes it is appropriate to remove them so that it is clear to patients, carers, staff and stakeholders that they will not be used.

The Government notes the representation made by Mind about this matter as contained in paragraph 90 of the report. This appears to refer to provisions of the Act that enable easements to the Care Act, to help local authorities to meet the most urgent and acute needs for COVID-19 related increased demand on social care services and reduce workfoce due to illness and isolation. Currently no local authorities are operating under easements. Over the entire life of the Act, a total of 8 local authorities out of 151 with social service responsibility have used easements to ensure they are able to meet the most urgent and acute care and support needs. DHSC continues to work with Think Local, Act Personal (TLAP) and the Association of Directors of Adult Social Services (ADASS) to understand the impact on individuals of the changes to Care Act 2014 duties. TLAP published a report in September (https://www.thinklocalactpersonal.org.uk/_assets/TLAP-TIG-report-on-Covid-19.pdf) which noted that there is insufficient evidence to attribute any change in care and support to Care Act easements. ADASS conducted work on lessons learned with the DASSs of local authorities who have operated under easements as well as local authorities who did not use easements. The report notes that only a small number of easements were utilised to ease the pressures of increased demand by local authorities which faced an immediate crisis.

The powers under Schedule 21 to the Coronavirus Act allow for potentially infectious people to be screened and assessed, if there is a risk that the person may be infected with coronavirus and may spread it to others. These provisions are within the Act in order

to protect the health of not only the person but in order to maintain public health. The powers under schedule 21 are essential for controlling the spread of the virus in the longer term, when we can pinpoint an outbreak to a specific person(s). As of 24 November, Public Health Officer powers have been used ten times. It could be very useful if a more stringent border regime were introduced as it applies without exemption.

Powers under Schedule 22 allow prohibition and/or restriction of gatherings, events and premises. As of 24th November, the UK Government has not exercised the powers conferred through this provision. The lockdown regulations (The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020)—made under the Public Health (Control of Disease) Act 1984—have been used to restrict gatherings. As with Schedule 21, we expect increased usage of the powers towards the latter part of the pandemic lifespan.

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)

The Government intends to timetable the six-monthly review date so that the two-monthly status report is published in good time. Whilst it may not always be possible to do this, for example, if the House is not sitting when the sixth two-monthly report is due, the Government will strive to ensure that timetabling is maximised in preparation for review. We will also continue to ensure that the details in the six-month report presented to Parliament will be no less detailed than the equivalent two-month report.

We are committed to providing parliamentarians with the most up to date information, through the provision of weekly Coronavirus Disease 2019 Surveillance reports and providing regular updates on the wider content that drives policy and how these policy decisions have worked in practice. Additionally, in response to our previous correspondence with the Committee, we have published the Coronavirus Act Analysis setting out the evidence and analysis that justifies the ongoing necessity of the Act and how it will support the NHS and help control the spread of the virus. This data will be updated in a timely manner https://www.gov.uk/government/publications/coronavirus-act-analysis/coronavirus-act-analysis.

Additional Comments: May 2021 Elections

25. **In paragraph 96 the Committee reported on concerns raised to them regarding the impact the Coronavirus Act could have on the May 2021 elections**.

The Government notes the concerns expressed by Dr Clark about postponing elections and the potential knock-on impacts this may have with elections in May 2021.

Using the powers contained in Section 59–63 in of the Act, in May 2020, local and mayoral elections in England and the Police and Crime Commissioner elections in England and Wales were postponed to help mitigate the risk of increased transmission rates. This followed the scientific and public health advice at that time. While, under normal circumstances, postponing elections is not desirable, these actions helped to mitigate unprecedented public health risk by reducing the likelihood of large gatherings and increased social contact. It enabled Returning Officers to avoid running polls at a time when the pandemic was developing in the UK. The use of polling stations and related activity would have increased the spread of the virus.

These actions also allowed local government to concentrate resources on its response to the pandemic, and enabled staff to be readily re-deployed to other duties to support the response to the pandemic.

The Government is confident that local government have the resources and capabilities needed to run the delayed elections when they happen.

We are working with partners to ensure the electoral sector has the information they need to deliver the polls, in accordance with their roles and responsibilities, over the coming months. The Electoral Commission will publish supplementary guidance to support local decision making. As always and in good time ahead of the polls, the Electoral Commission will run a public awareness campaign to ensure people have all the information they need to participate.