The Government's Response to the Joint Committee on Human Rights Report: The Government's Response to COVID-19: Human Rights Implications

Presented to Parliament

by the Secretary of State for Health and Social Care

by Command of Her Majesty

December 2020

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Introduction

This is the Government's formal response to the recommendations made by the Joint Committee on Human Rights in its report 'The Government's response to COVID-19: Human Rights Implications' published on 21 September 2020.

The Committee's report seeks to inform the six-month review of the Coronavirus Legislation required by the Coronavirus Act 2020. The report raises points on some of the measures the Government has used in its response to the virus.

The Government welcomes the JCHR's report on the human rights implications of the Government's response to COVID-19. As the report points out, the central aim of the Government's response has been to protect lives. The Coronavirus pandemic has had an unprecedented global impact that has severely affected public health, the economy and society. The Government is mindful that the spread of the virus has caused hardship for many people in the UK over a sustained period. This has been particularly difficult for those areas subject to additional restrictions since the summer due to a continued high prevalence of the disease. Balancing consideration of the economic and social implications of restrictions with the need to protect public health and make sure the NHS does not become overwhelmed is challenging, but the Government has been committed to a proportionate and flexible response.

The Government also recognises the need for appropriate parliamentary scrutiny of the actions it has taken, seeking to respect Parliament and work within the legal frameworks presented to it. The Government values the role of Parliament and will continue to ensure there is opportunity to appropriately scrutinise the ongoing response to the pandemic.

The Government took early and decisive action by introducing a range of measures to combat the virus, ramp up testing, support detection, reduce transmission and engage in research to improve our understanding of the virus and how its impacts can be mitigated. One such measure was the Coronavirus Act 2020, which received Royal Assent in March 2020, and gives the Government and public bodies the powers they need to carry out an effective response to this public health emergency.

The NHS Test and Trace service was launched on 28 May across England. It is central to the Government's Coronavirus strategy, designed to enable life to return to as close to normal as possible, for as many people as possible, in a way that is safe and protects the NHS and social care. The service helps identify, contain and control the rate of reproduction (R) of COVID-19, reducing its spread and saving lives.

The restrictions that individuals are placed under in order to reduce the risks of transmission are also reviewed regularly to ensure they are proportionate and are reduced when appropriate. The Government's COVID-19 Winter Plan puts forward the UK Government's programme for suppressing the virus, protecting the NHS and the vulnerable, keeping education and the economy going, and providing a route back to normality. This reflects how we are adjusting our approach to the virus

given the current situation, which includes the promise of further scientific advances and vaccinations on the horizon, while still dealing with worrying rates of transmission during the winter months. The Government has learnt from experiences so far which is why the Tiers system is different now than in October. Moving from the National Covid Restrictions into Tiers ensures that the Government can respond to local, and changing, situations, whilst also keeping the fewest number of interventions in place for the shortest time period necessary. The Government is committed to this as we understand it is important for people's individual freedoms and entitlements.

The published Winter Plan can be accessed here: https://www.gov.uk/government/publications/covid-19-winter-plan.

But we are mindful that we need to monitor the impact that the measures taken are having on people, remaining flexible so that we can adapt to new evidence and changes in risk. Where measures have been taken, in particular legislative measures, the Government has sought to put them in place for as short a period as reasonably practicable and often with the additional checks and balances of sunsetting clauses and fixed review points. The Coronavirus Act 2020, for example, is reviewed regularly to ensure its provisions are being applied appropriately and that they are still needed. The fourth 2-monthly review (for the period 25 September – 24 November) of the Act concludes that it continues to provide the flexibility required to take decisive, measured and proportionate action to mitigate the impact on society and the economy, as well as protect public health. However, as part of the overall approach to keep interventions as limited as possible, on 25 November the Section 10 (Schedule 8) Mental Health Provisions in the Act have been expired following debate in both Houses. The provisions relating to patients involved in the criminal justice system will also be removed in Wales. This was decided as part of the 6-monthly review of the Coronavirus Act. This is detailed in the response to Recommendation 22 of your report. Furthermore, the Health Protection Regulations have been kept under ongoing review. This includes formal reviews every 28 days (21 days until June) with restrictions being removed or exemptions provided wherever possible.

The following response outlines the Government's consideration of the recommendations made within the report. This response was collated by the Department for Health and Social care (DHSC) with input from relevant Government departments where necessary. The response has been structured to the subheadings in the Committee's list of conclusions and recommendations.

Summary of Committee Recommendations

Recommendation Number	September2020 Report Recommendations
	The Lockdown Regulations
1	It is important that there is clarity for the public in relation to any criminal laws, and particularly laws relating to the lockdown. Information must be accessible to disabled people, especially those with cognitive impairments. (Paragraph 52)
2	More care must be taken by the Government to distinguish between advice, guidance and the law, in media announcements as well as in official online sources. There must be certainty—for Government, the public as well as lawyers and the police–as to what is prohibited by the criminal law. In particular, more must be done to make the up to date regulations themselves (not only guidance) clearly accessible online, particularly as the law has changed, on average, once a week. It ought to be straightforward for a member of the public to find out what the current criminal law is, nationally and in their local area, without having to trawl through multiple sets of confusingly named regulations. (Paragraph 53)
3	Nonetheless, it is imperative that Government provide sufficient warning of changes to the law, and coordinate with appropriate bodies, so that police forces and bodies such as the NPCC and CoP have time to understand and explain those changes (Paragraph 57)
4	It is unacceptable that many thousands of people are being fined in circumstances where (a) the lockdown regulations contain unclear and ambiguous language, (b) there is evidence that the police do not fully understand their powers, (c) a significant percentage of prosecutions have been shown to be wrongly charged, (d) there has been no systematic review of FPNs and (e) there is no appeal or review provided for under the Regulations. (Paragraph 61)
5	There is currently no realistic way for people to challenge FPNs which can now result in fines of over £10,000 in some cases. This will invariably lead to injustice as members of the public who have been unfairly targeted with an FPN have no means of redress and police will know that their actions are unlikely to be scrutinised. The Government should introduce a means of challenging FPNs by way of administrative review or appeal. (Paragraph 62)
6	It is important that the rules also allow for reasonable flexibility to ensure that any interference with the right to protest under Article 10 and 11 is only to the extent necessary and proportionate. It is important that there is a consistent approach taken to preventing gatherings whether they be VE Day celebrations or Black Lives Matter protests. (Paragraph 63)
	Health and Care
7	In order to prepare for further waves of Covid-19 or future pandemics, the Government must take steps to ensure that the allocation and prioritisation decisions and policies relating to the provision of PPE are evidence-based and non-discriminatory. (Paragraph 72)
8	The blanket imposition of DNACPR notices without proper patient involvement is unlawful. The evidence suggests that the use of them in the context of the Covid-19 pandemic has been widespread. The Court of Appeal has previously held that there is no legal requirement for the Government to implement a national DNACPR policy. However, the evidence suggests that the absence of such a policy has, in the context of the pandemic, led to systematic violation of the rights of patients under Articles 2 and 8 ECHR. The systematic nature of this violation means that it is now arguable that the Government is under such an obligation. Whether or not the events of the pandemic have changed the nature of the Government's legal obligation, we consider it would assist in the

	protection of patients' Article 2 and 8 rights if the Government did now set out such a policy. Such a policy should make clear, amongst other things, that DNACPR notices must never be imposed in a blanket fashion by care providers; the individuals must always be involved in the decision-making process, or where the individual does not have capacity, consultation must take place with persons with an interest in the welfare of the patient. It is not clear whether the documents promised by the Secretary of State will meet these requirements. (Paragraph 76)
9	We are concerned that decision-making relating to admission to hospital, in particular critical care, for adults with Covid-19 has discriminated against older and disabled people. We are also concerned that decisions made to support the capacity of the NHS to provide care for patients with Covid-19 have been made without adequate consideration of the impact on particular groups of others whose treatments have been cancelled or postponed in consequence. The Government must ensure both that clear national and local policies are in place to govern prioritisation of healthcare provision during a pandemic, and that those policies do not discriminate unlawfully. (Paragraph 83)
10	The decision to reduce care provision to certain individuals is a very serious matter, particularly in circumstances where care needs may have increased during the pandemic. The Government must justify its reasoning for the continuation of the powers to trigger easements to social care provision, and they must only continue if absolutely necessary and proportionate. (Paragraph 89)
11	If this power (which has barely been used thus far) is to continue beyond the six-month review period, the Government should issue specific guidance about meeting human rights standards in the discharge of obligations under the Care Act 2014 and develop guidance as to the content required of human rights assessments. (Paragraph 90)
12	The Government must ensure that local authorities and care providers are able to meet increased care and support needs during and resulting from the pandemic. (Paragraph 91)
13	We question whether removing vital protections for children was a proportionate response to the challenges posed to the children's social care system by Covid-19. The Government must justify its reasoning for the continuation of these powers, and they must only continue if they can be shown to be absolutely necessary and proportionate. (Paragraph 94)
14	The very high number of deaths from Covid-19 in care homes is a matter of deepest concern to us and engages the operational duty to secure life (Article 2 ECHR). The causes behind it are complex and we have not been able to devote the necessary time and attention to address them fully in the context of this report. It is, however, imperative that they be interrogated thoroughly in order to meet the state's procedural obligations under Article 2. We urge the Government to ensure that address the issue of Covid-19 related deaths in care homes in dealt with as a priority in any inquiry or review they undertake (Paragraph 97)
	Detention
15	Lockdown restrictions in prisons must be subject to a reasoned and transparent human rights proportionality assessment and only used for the minimum time necessary. Children should not under any circumstances be subject to lockdown restrictions which amount to solitary confinement. (Paragraph 109)
16	Given the risk of further waves of the pandemic, the Ministry of Justice should carry out a full evaluation of its Covid-19 policy in prisons, young offender institutions and secure training centres as a matter of urgency and issue guidance on how to respond to future outbreaks. (Paragraph 110)
17	While short scrutiny visits by the prisons' inspectorate have proved an important source of information on what has been happening inside detention settings during the pandemic, continuing restrictions on

	inspections mean that human rights abuses may be going undetected in these settings. It is imperative that full inspections resume, safely, as soon as possible. (Paragraph 112)
18	Blanket visiting bans in prisons are incompatible with the right to family life (Article 8 ECHR). Any restriction on visiting rights must be shown to be necessary and proportionate in each individual case. As soon as it is safe to do so, prison visiting must resume as a matter of priority in all prisons. (Paragraph 115)
19	In accordance with the Government's commitments, in-cell telephones and facilities to make video calls must be installed in all prisons and young offenders institutions without delay, so that in the event that it is necessary to restrict prison visits again in the future, the technology is available to allow prisoners to maintain contact with their families and loved ones. (Paragraph 116)
20	At the time of writing the Government had not yet responded to our July 2020 report "Human Rights and the Government's response to COVID-19: children whose mothers are in prison". We urge them to commit to implementing our recommendations from this report in full at the earliest opportunity. (Paragraph 120)
21	We are currently awaiting the Government's response to both our previous reports on the detention of young people who are autistic and/or have a learning disability. Those reports exposed that young people in these settings were subjected to significant and frequent violations of their human rights. Our recommendations in these reports must be implemented in full as matter of urgency to bring these human rights violations to an end. (Paragraph 125)
22	The continued ability of the DHSC to bring changes to the Mental Health Act 1983 into force after the first six months of the CV Act must be justified or the powers repealed. If the powers are maintained in any way, the DHSC must publish the guidance to accompany them so that is possible for there to be scrutiny of their provisions. The Government should also make clear what steps it is taking to bring forward the White Paper promised to respond to the Independent Review of the Mental Health Act 1983. (Paragraph 128)
23	The Mental Health Tribunal should be supported to be able to discharge its functions with hearings conducted by three member panels, by video, wherever possible, and to enable the return of pre-hearing examinations, to minimise the impact of what has been a substantial diminution in the safeguards provided by the Tribunal. (Paragraph 130)
24	We agree with Mr Justice Hayden that Deprivation of Liberty Safeguards (DoLS) provide 'indispensable safeguards' for those who are subject to them. Indeed, DoLS are more important than ever when those who lack capacity to consent to new restrictions on their freedoms may be subjected to such new restrictions intended to protect their right to life. DoLS provide a framework for verifying that such restrictions are necessary and proportionate. It is vital that DoLS authorisations are in place to ensure persons deprived of their liberty on the ground of mental incapacity have safeguards in place and the means to challenge their deprivation of liberty. (Paragraph 133)
25	It is essential that Liberty Protection Safeguards are introduced in April 2022 and that there is no further delay. Resources must be allocated to ensuring that the new safeguards are implemented effectively, and that all those involved are properly trained, within the new timetable. (Paragraph 134)
26	We hope that future DHSC guidance on visiting in care homes will allow for a more proportionate approach to visiting which minimises any necessary interference with residents' right to family life (Article 8 ECHR). The Government must ensure that care homes are not implementing blanket bans on visiting. Restrictions on visiting rights must only be implemented on the basis of an individualised risk assessment and such

	risk assessment must take into account the risks to the person's emotional wellbeing and mental health of not having visits. (Paragraph 136)
27	Where there is no reasonable prospect of removal within a reasonable timeframe, immigration detention ceases to be lawful. The Home Office should keep cases under review to ensure that individuals are not detained unlawfully. (Paragraph 140)
28	For those individuals in immigration detention, as in other detention settings, steps taken to prevent the spread of the disease into and within detention settings should be reviewed at regular intervals and particular care should be taken in respect of individuals who are considered to be especially vulnerable to Covid-19 (Paragraph 141)
29	The JCHR's previous report on immigration detention highlighted the importance of making detention decisions independent of the Home Office to ensure that the initial decision to deprive a person of their liberty is robust and fully justified. The Committee recommended that "in cases where detention is planned there should be properly independent decision-making" and that detention "decisions should be pre-authorised by a person or body fully independent of the Home Office." We urge the Government to implement this recommendation: in the context of the pandemic it is more important than ever, given the risk to immigration detainees' health. (Paragraph 142)
30	There is no safeguard as to the length of storage of the biological information collected under powers relating to potentially infectious persons, nor safeguards relating to its destruction, and future use. The Coronavirus Act should be amended to ensure this medical data is subject to adequate safeguards. (Paragraph 148)
31	It is hoped that the vast majority of "potentially infectious" people will comply with public health advice, and that legal enforcement will not be necessary in such cases. In such circumstances, the Government must justify the continued need for an executive power to deprive a wide cohort of persons of their liberty. Article 5(1)(e) ECHR allows states to detain individuals "for the prevention of the spreading of infectious diseases … ". Although the case law on Article 5(1)(e) is very limited in this context, it is clear that courts will consider whether less severe measures have been considered and found to be insufficient to safeguard the public interest, before using detention as a last resort. The Government must justify why it is necessary and proportionate for these extraordinary powers to remain law. In particular, the Government must provide evidence to Parliament that these powers are necessary for the prevention of the spread of Covid-19 and that the power to prosecute is not being misapplied. In the absence of any clear evidence to support the retention of these powers, they ought to be repealed. (Paragraph 154)
32	In order to allow Parliament to assess the Government's use of these significant powers, the Government must publish data setting out the number of individuals who have been subject to these powers, the number of individuals who have been charged under the new offences, and any successful appeals there have been against the use of these powers. (Paragraph 155)
33	There are some safeguards built into the powers, but if these powers are to be retained beyond the six-month review, these safeguards should be strengthened a) The definition of "potentially infectious person" should be reviewed to ensure that its scope is not too wide and the powers are not open to abuse. b) The Act provides that these powers may only be exercised where necessary and proportionate in the interests of the person, for the protection of other people, or the maintenance of public health. The Government should ensure its guidance is up to date and available for officers regarding the application of this test.

	c) There should be minimum requirements for the designation of a "public health officer" to ensure only experienced and qualified persons are able to exercise such powers. d) There should be robust safeguards as to the length of storage of the biological information collected, its destruction and future use. e) The only right of appeal provided for is in relation to powers exercisable post-screening and assessment. Individuals should be given a right of appeal to the Magistrates Court in relation to all powers, particularly given the option of judicial review is not an immediate and effective remedy for detained persons. f) Guidance from the Department for Health should be incorporated into the Act to state that if someone lacks the capacity to make an appeal, it can be made by someone on their behalf even if the person is not objecting or does not understand they can make a challenge. (Paragraph 156)
	Contact Tracing
34	It is welcome that the Government decided to stop the development of the centralised model for their contact tracing and is now working on a decentralised model instead. However, privacy issues remain. To build trust with users, which has been shaken by high-profile missteps, the Government should introduce legislation which defines what data will be collected, how long it can be held, when it will be deleted. Such legislation should include a ban on contact tracing data being shared for any purpose other than combating the spread of Coronavirus. (Paragraph 167)
35	Manual contact tracing is the main component of the UK's test, track and trace system. This still involves data being collected; indeed, that data is arguably more sensitive than that collected by the app. Whether that data is gathered digitally or manually, the legislation should limit how long manually gathered data can be held, define what type of information can be gathered, confirm when it will be deleted, and restrict it from being shared for any purpose other than combating the spread of Coronavirus. (Paragraph 168)
	Children and the right to education
36	The Government has obligations to ensure that all children have access to education and that the best interests of the child are a primary consideration in decision-making. Thus, the provision of education and the best interests of the child should be at the forefront of policy and decision making. (Paragraph 177)
37	Our evidence suggests that whilst school closures have affected all children, these closures have had different impacts for different groups of children. The effects of these different impacts - and how best to mitigate against unwanted impacts - should be factored into the Government's policy and decision-making. The disparity in education accessed by different groups of children suggests that there should have been better guidance to schools from the Government around continuity of education. The unequal access to education for disadvantaged children is of real concern and the Government must ensure that it does not lead to wider inequality in society. (Paragraph 178)
38	In particular, school closures have created specific barriers to children with SEND's access to their right to education. This is really concerning. We urge the Government to look into the effect that school closures have had on young people with SEND and to address any barriers to them returning to schools and accessing education. Where it is not in the best interests of the children to be in school, for example if they are shielding, appropriate support should be provided to them so that they can learn from home. (Paragraph 179)
39	Some of these changes to children's right to education were made through press announcements alone or through the use of Notices or Directions issued under powers in the Coronavirus Act. The Government

	should not interfere with human rights without a clear legal base and should be clear as to whether it has legally changed children's rights or is merely changing messaging—such differences have been obscured during the Coronavirus crisis communications and this makes it difficult for parents and children to understand their rights. Whilst Government explanations, comments and press notices can be useful tools to explain legal changes, the Government must make it clear as to whether a new announcement, such as one purporting to "close schools" is made under legal powers to direct the closure of schools or is merely advisory—the rule of law is threatened if the Government obscures the legal status of its announcements. Further, legal documents—including Notices and Directions—which may interfere with human rights should be easily accessible. This is crucial for compliance with both the rule of law and human rights. The Government must ensure that all Notices and Directions interfering with human rights are published and readily available or signposted on gov.uk. (Paragraph 180)
	Access to Justice
40	The judicial approval of warrants is a necessary safeguard against unjustified interference with private and family life (Article 8). Extending the period of time before judicial approval of an urgent warrant is required could prolong any unjustified interferences with Article 8. As part of the review process, the Government should provide to Parliament data on how many urgent warrants have been used during the emergency period, and the timeframe within which judicial approval was obtained. The Government should also inform Parliament whether the Investigatory Powers Commissioner has made a request that the Secretary of State vary the time allowed for urgent warrants, and the outcome of this request. (Paragraph 184)
41	Whilst we welcome the expansion of technology to overcome the severe challenges facing the justice system, we are concerned to hear of these barriers to the public accessing court hearings. Virtual public galleries must be implemented to ensure scrutiny of criminal proceedings and respect for the principle of open justice. Public access should not be subject to the permission of judges. This is an important safeguard to ensure the right to a fair trial is being upheld. (Paragraph 187)
42	The expansion of live link technology in courts is to be welcomed as a means of avoiding delays in the criminal justice system. However, if such measures are to continue, the Government must ensure that digitally excluded persons, or those who are vulnerable, can participate effectively and are not disadvantaged. The technology must also be of sufficient quality to ensure a fair trial. It is crucial that defendants are provided with a direct and confidential line of communication with their representatives, just as they would have in person in court. The public must also be able to attend virtually to ensure the principle of open justice is preserved and to allow for scrutiny of proceedings. (Paragraph 190)
43	Given these significant delays, where children turn 18 between the commission of the offence and their sentencing, they should be dealt with as children in the youth courts. (Paragraph 192)
44	Whilst it is clear that the European Convention provides that defendants are entitled to appear before court within a reasonable time period, determining what is "reasonable" in the midst of a public health emergency is difficult. Delays are inevitable, and the margin of appreciation afforded to states during the pandemic is likely to allow for significant leeway given the exigencies of the situation, but prolonged pre-trial detention must be avoided. As trials are being adjourned for significant periods of time, extensions to custody time limits must be reviewed to ensure that persons who have not been convicted are not being held in detention for lengthy periods of time. All defendants have the right to a timely trial before an independent and impartial tribunal and

	this right must be respected and provided for as speedily as possible. (Paragraph 198)
	Procedural obligations to protect the right to life
45	The Government should give serious thought to establishing a Commissioner or Office of Article 2 compliance, to ensure that the correct processes are followed in cases requiring Article 2 investigations, without relying on bereaved families for ensuring appropriate follow-up. Such a body could ensure that lessons are learned, and that best practice is disseminated to relevant bodies to prevent future unnecessary deaths (Paragraph 203)
46	The absence of any imminent inquiry into Covid-19 deaths means that in England and Wales, and in Northern Ireland, inquests will be the principal means of discharging the UK's procedural duties under Article 2. Coronial courts will have to progress as best as they can all matters requiring a procedural Article 2 investigation in a given case. (Paragraph 206)
47	The most urgent of the procedural obligations in the Covid-19 context is to ensure that lessons are being learned as soon as possible so as to avoid unnecessary deaths. It is therefore crucial that some form of swift lessons learned review is undertaken as soon as feasible and incorporated in the Government's planning and response to any further waves of the pandemic. (Paragraph 210)
48	Although it is reassuring to know that the Government values lesson learning and that there are a number of systems in place for regular investigations into deaths in health and care settings, this is not a sufficient response to their duties under Article 2. The systems referred to by the Government are not designed to review a complex and wide-ranging response to a pandemic. The response to the Coronavirus outbreak has necessarily not been equivalent to a standard response to an individual death in NHS care. The response has affected the entire population in profound (and profoundly different) ways. Therefore, the reviews and processes in place for individual deaths are obviously ill-adapted to the sort of review required in relation to a complex and wide-ranging response to a pandemic. (Paragraph 211)
49	The Government should immediately organise a quick, interim review into deaths from Coronavirus to ensure that key lessons are learned as soon as possible, and in advance of any second peak in the Autumn/Winter. This review should be swift, independent and must be published. (Paragraph 212)
50	It is very likely that an inquiry will be needed in order to fulfil the State's obligations under Article 2 ECHR to investigate structural issues affecting Covid deaths. We welcome the Prime Minister's announcement that there will be an inquiry. If such an inquiry is to be effective in learning lessons in time to save lives, it would ideally have clear, focussed objectives and be time-limited. Such an inquiry should include consideration of (i) Covid-19 deaths in a detention setting; (ii) Covid-19 deaths of healthcare/care workers and PPE; (iii) Covid-19 deaths in care homes due to early releases from hospitals; (iv) deaths where the person has been denied access to critical care; (v) Covid-19 deaths of transport workers, the police and security guards due to inadequate PPE. (Paragraph 215)
51	The Government should consider whether there is a need for a more targeted and automated Article 2 inquiry process to enable a more cost-effective, depoliticised and focussed means for the UK to swiftly learn lessons from unnecessary deaths and discharge its right to life obligations. (Paragraph 216)
	Accountability and Scrutiny
52	We expect any extension to the expiry date of the Coronavirus Act provisions to be subject to parliamentary debate and approval before, not after, any extension comes into effect. The made affirmative should be avoided for such purposes. (Paragraph 221)

53	It is unfortunate that the Government has chosen not to use the powers within the Civil Contingencies Act 2004 or the Coronavirus Act 2020 to legislate. These pieces of legislation were designed to be used in emergencies, and contain specific safeguards to ensure that while the Government can act, its actions are subject to Parliamentary monitoring and approval. These safeguards, along with the opportunity for proper parliamentary scrutiny, are particularly important when human rights are engaged on such a massive scale. The Government must explain why it used the 1984 Act power for legislating rather than the Coronavirus Act 2020 or the Civil Contingencies Act 2004 with all the safeguards that these measures contain. (Paragraph 222)
54	The use of emergency procedures for passing laws should be exceptional, limited to situations where the nature of the emergency itself requires the use of emergency procedures, and should require explicit justification, especially when human rights are at stake. The Government must consider whether a better balance could be struck between the flexibility of urgent legislation and the need for scrutiny by Parliament when legislating to respond to a public health crisis such as this. (Paragraph 228)
55	Major announcements should be made to Parliament rather than through news channels or other press briefings, especially when human rights of so many are to be engaged in so many ways. (Paragraph 230)

Responses to the Committee's Recommendations

The Lockdown Regulations

1.It is important that there is clarity for the public in relation to any criminal laws, and particularly laws relating to the lockdown. Information must be accessible to disabled people, especially those with cognitive impairments. (Paragraph 52)

The Government agrees that clarity is important, and that information must be accessible to disabled people, especially those with cognitive impairments. We are committed to providing information that is accessible to as many people as possible. We have published a range of guidance and information digitally to support people in understanding what they should do to protect themselves, their families, the vulnerable and the NHS. Digital copies help us to ensure information is always up to date. Furthermore, Press Partnerships use the sponsored content to provide more detailed information on key Coronavirus issues, which included a Q&A on the Local Covid Alert Levels (tiers).

Government health and care guidance on key topics such as National Restrictions, household isolation, shielding and social distancing are provided in alternative formats including Easy Read and are compatible with screen readers. Braille, audio and other formats are available on request. In addition, the Public Health England (PHE) Campaign Resource Centre (CRC) provides a wide range of free materials for organisations to download, so they can share Government advice and guidance. This includes guidance on how best to stop the spread of Covid-19, recognise symptoms, the Test and Trace programme, return to school, and supporting both physical and mental health. Alternative formats, including Easy Read, large print and translations are widely available as part of these resources. The Government has also worked with broadcasters to ensure signed broadcasts are available to the public, by establishing British Sign Language interpretation for the No. 10 press conference via the BBC News channel and iplayer, available on all TV packages as part of Freeview, as well as working to ensure greater replication of this signed interpretation across a wider range of media channels.

Finally, NHS organisations and publicly funded social care providers must make reasonable adjustments to ensure that disabled people are not disadvantaged. This includes satisfying the Accessible Information Standard to meet the communication needs of patients and carers with a disability, impairment or sensory loss.

2. More care must be taken by the Government to distinguish between advice, guidance and the law, in media announcements as well as in official online sources. There must be certainty—for Government, the public as well as lawyers and the police–as to what is prohibited by the criminal law. In particular, more must be done to make the up to date regulations themselves (not only guidance) clearly accessible online, particularly as the law has changed, on average, once a week. It ought to be straightforward for a member of the public to find out what the current criminal law is,

nationally and in their local area, without having to trawl through multiple sets of confusingly named regulations. (Paragraph 53)

The latest laws are accessible via legislation.gov.uk, including legislation on COVID 19. The publication of legislation includes an Explanatory Memorandum which explains the background and content of the legislation in non-technical language. This is in line with the usual approach to introducing legislation.

The legislation on restrictions is supported by guidance that is published on Gov.uk which explains: why action is needed, what actions people must follow as set out in law and the Government's advice on what they can do to protect themselves and others. The Government continues to review guidance online and ensure that it is up to date, and accessible so the public are able to interpret it correctly. This includes ensuring that guidance clearly distinguishes between Government advice and what measures people are legally required to follow.

Finally, the Government has provided media briefings to explain significant changes in regulations and during these, we have taken questions from the media and public to outline what this means.

The College of Policing issues guidance to police officers based on the regulations themselves, which Home Office shares. The Government does not feel that police are confused (in general) about what is guidance and what is law as they will only enforce what is in regulation. For example, the police never enforced the two-metre rule as that is guidance. They have, at all times, maintained a 4E approaches – seeking to engage, educate and encourage, prior to resorting to enforcement action.

The Office for Product safety and Standards (OPSS), housed in BEIS, provides similar detailed guidance to local authority enforcement officers, so that they are also equipped to enforce the law effectively.

Information on new national and local restrictions, regulations, including guidance and laws are published regularly on the Governments' website and explained via Government online andmedia outlets and briefings from senior Government Policy Officials.

3.Nonetheless, it is imperative that Government provide sufficient warning of changes to the law, and coordinate with appropriate bodies, so that police forces and bodies such as the NPCC and CoP have time to understand and explain those changes (Paragraph 57)

The police have been kept updated on changes as the Government acts quickly to address the public health risk. We have engaged with operational partners and relevant bodies, including the National Police Chiefs' Council and College of Policing, on the measures, working closely with them as regulations are finalised, incorporating lessons learned each time. Guidance has been issued to officers on all relevant changes to the regulations. We have also worked closely with local authorities on developing new enforcement powers in relations to business restrictions.

4.It is unacceptable that many thousands of people are being fined in circumstances where (a) the lockdown regulations contain unclear and ambiguous language, (b) there is evidence that the police do not fully understand their powers, (c) a significant percentage of prosecutions have been shown to be wrongly charged, (d) there has been no systematic review of FPNs and (e) there is no appeal or review provided for under the Regulations. (Paragraph 61)

The Government has provided guidance to explain the rules that apply, and when changes are made to those rules. Police forces have supported compliance to the rules through their "4Es" approach. The police first try to engage with individuals, explain how they think that individual is breaching the rules, and encourage them to change this behaviour in order to reduce the risk to public safety and health. Finally, and where necessary, enforcement action can be taken.

Between 27 March and 16 November (dates for which latest data is available), 24,933 Fixed Penalty Notices (FPNs) have been recorded as having been issued by territorial police forces in England and Wales (and the British Transport Police and Ministry of Defence Police) in relation to COVID-19 enforcement. These are very low volumes when compared with other enforcement data. For example, in a normal year over a similar time period, we would expect an average of around 1.5m FPNs (i.e. over 74 times higher) to be issued as a result of motoring offences in England and Wales.

Throughout the pandemic the government has worked closely with operational policing partners. The NPCC and College of Policing have developed guidance to establish and support the approach to compliance and enforcement across all forces, to reflect the rules in place and any subsequent changes. The guidance is disseminated to forces and officers are briefed to ensure that they are able to act to enforce the law and that they understand the approach to enforcement. The Government will continue to work with partners to make sure the new measures are understood by forces around the country. The NPCC has also set up a helpline for officers to assist them should they have any questions about the regulations and enforcement.

Where individuals are issued with an FPN they can pay within 28 days to discharge criminal liability. An individual can choose not to pay the FPN and instead await a decision from the police and then the Crown Prosecution Service as to whether criminal proceedings are bought. The decision around criminal prosecution is the same as with any other criminal offence, during which the Crown Prosecution Service must prove that the offence has been committed.

All emergency health legislation introduced to tackle the coronavirus, including provision for the issue of fixed penalty notices, has been subject to statutory review periods.

5, There is currently no realistic way for people to challenge FPNs which can now result in fines of over £10,000 in some cases. This will invariably lead to injustice as members of the public who have been unfairly targeted with an FPN have no means of redress and police will know that their actions are unlikely to be scrutinised. The

Government should introduce a means of challenging FPNs by way of administrative review or appeal. (Paragraph 62)

It is right that deterrents are used as part of the compliance and enforcement approach, and that the small minority of people who create the most risk through egregious breaches of the rules face tough penalties.

As has always been the case, if someone chooses not to pay a Fixed Penalty Notice the offence for which the FPN was issued can be considered at court, but the individual may face a criminal conviction if found guilty and courts can levy whatever fines they deem fit within sentencing guidelines.

6.It is important that the rules also allow for reasonable flexibility to ensure that any interference with the right to protest under Article 10 and 11 is only to the extent necessary and proportionate. It is important that there is a consistent approach taken to preventing gatherings whether they be VE Day celebrations or Black Lives Matter protests. (Paragraph 63)

The Government has put in place necessary and proportionate restrictions on movement, gatherings and businesses. In these unprecedented circumstances, gatherings risk spreading the disease, leading to more deaths, measures have been adopted therefore to reduce social contact and subsequently transmission. We have continued to keep the approach to restrictions under review to ensure they do not disproportionately affect any groups. The strategy has considered the equality and human right impacts of the response to the pandemic, and it continues to embed equality and human right considerations into all interventions to inform decision-making. The measures do not restrict anyone's right to hold or express their views, or to do so in a way that could be construed as a protest, beyond what is necessary and proportionate to protect public health

Management of protests is an operational matter for the police. Throughout the pandemic police forces across the country have established proportionate police plans and provided resources to support the facilitation of both planned and spontaneous protest activity in their respective areas. Forces have observed that many organisers have either postponed or cancelled protests or organised mass gatherings in response to the Government's regulations. As they have done throughout the pandemic, the police and local authorities will engage, explain and encourage people to follow the rules before moving on to enforce the law

Health and Care

7. In order to prepare for further waves of Covid-19 or future pandemics, the Government must take steps to ensure that the allocation and prioritisation decisions and policies relating to the provision of PPE are evidence-based and non-discriminatory. (Paragraph 72)

The Government is firmly committed to addressing the reported practical difficulties of some PPE to ensure there is appropriately fitting PPE on the frontline for winter and any second wave and to ensure allocation decisions are evidence-based and non-discriminatory. We are committed to understanding user needs and taking appropriate action to incorporate user feedback in PPE provision. Feedback has largely focused on the fit of face masks where an appropriate fit is critical for effective protection.

DHSC and NHS England and NHS Improvement (NHSEI) have sought to learn from the experience of BAME staff during the pandemic, with one example being FFP3 masks which do not fit different face shapes. Subsequently, in June, NHSEI launched the FFP3 fit-testing project, led by the Deputy Chief Nursing Officer, to investigate if characteristics such as age, gender, ethnicity, facial profile and other features (e.g. the impact of head coverings on FFP3 mask fit).

The initial phase has now been completed and data has been collected from 5557 participants across 47 NHS trusts from a range of diverse backgrounds. Informed by this data, NHSEI has set up a multidisciplinary task and finish group led by the Deputy Chief Nurse for Safety and Innovation to ensure that future PPE procurement decisions take the range of demographic characteristics into account.

DHSC have also developed enhanced supplier relationships partnerships with selected mask manufacturers and suppliers to secure a wider range of FFP3 masks to give NHS Trusts and users more choice and also to ensure a resilient supply of appropriate fitting masks, suitable for a wider range of face shapes, are getting to the frontline over winter and any second wave.

In September, as part of the strategy to diversify the portfolio of FFP3 masks, DHSC's Face Mask Category Team published a catalogue of 16 different FFP3 masks from 10 manufacturers/ suppliers that are available from the DHSC PPE Programme. Eight models of FFP3 masks are available to the NHS now, with over 30 million units available for distribution. A further eight types will be available in the next two months as part of the UK make strategy, selected because of their diverse shapes and sizes and also because they have resilient high-volume supply chains and meet the highest technical and clinical standards. Additionally, four out of the 10 manufacturers featured in the catalogue are UK-based. This enables us to have a closer relationship with manufacturers and offers more opportunities for the industry to hear directly from the user and involve them in the design and development of products. Some UK manufacturers are already actively ensuring that frontline user experience and preferences are being incorporated into the design and development of products.

We are also ensuring that NHS trusts are receiving their choice of masks, minimising the need for new fit-testing and ensuring staff on the frontline can access masks they have successfully fit-tested to. With this system, each NHS trust then selects the percentage of each mask that they'd like to receive, based on which masks best suit their staff. They also have the option to order some specifically for the purpose of fit testing.

The Government has also established a Fit Testing Programme for England. This has been set up to support NHS trusts in their fit testing of staff to the new supplies of UK Made FFP3 masks as they

become available. The programme includes a team of up to 160 fit testers being mobilised for approximately five months. These fit testers are being trained to HSE recognised standards and will work closely with each trust's own fit testers to enable staff across NHSE to be accredited to use a wider range of masks.

The Government is also committed to maximising user comfort and minimising any harm caused by wearing PPE, particularly for those individuals wearing PPE for prolonged periods. NHS England and Improvement are liaising with Southampton University who are undertaking research on the impact of PPE and the number of breaks required to relieve specific regions of the face. As well as this, the increased diversity of face masks available through the resilient supply chain provides users with the opportunity to change during a shift from one mask type to a different model which will help to relieve the facial pressure in the same places.

In August, DHSC piloted the use of clear face masks and delivered 250,000 masks to NHS and social care providers across the UK. Providing the right protection for frontline staff is a priority – the clear face masks have passed the Health and Safety Executive's safety checks and are approved for use for direct communication with patients or residents. These help to facilitate communication with users who rely on lip reading and facial expressions including people who are deaf and people with hearing loss, people with dementia, people with a learning disability, autistic people and people with complex needs. These masks are already making a difference to the treatment of many individuals ensuring they can receive the highest quality care possible. The pilot is now in its second phase and we are gathering further feedback as part this stage to find out where and what demand is to inform future procurement.

8. The blanket imposition of DNACPR notices without proper patient involvement is unlawful. The evidence suggests that the use of them in the context of the Covid-19 pandemic has been widespread. The Court of Appeal has previously held that there is no legal requirement for the Government to implement a national DNACPR policy. However, the evidence suggests that the absence of such a policy has, in the context of the pandemic, led to systematic violation of the rights of patients under Articles 2 and 8 ECHR. The systematic nature of this violation means that it is now arguable that the Government is under such an obligation. Whether or not the events of the pandemic have changed the nature of the Government's legal obligation, we consider it would assist in the protection of patients' Article 2 and 8 rights if the Government did now set out such a policy. Such a policy should make clear, amongst other things, that DNACPR notices must never be imposed in a blanket fashion by care providers; the individuals must always be involved in the decision-making process, or where the individual does not have capacity, consultation must take place with persons with an interest in the welfare of the patient. It is not clear whether the documents promised by the Secretary of State will meet these requirements. (Paragraph 76)

The Government remains clear that the blanket application of Do Not Attempt Cardiopulmonary Resuscitation decisions (DNACPRs) is unacceptable and that standards and quality of care should be maintained even in pressurised circumstances. There is continued action to ensure that best practice for DNACPRs is followed.

The Department of Health and Social Care has asked the Care Quality Commission (CQC) to review how DNACPR decisions were used during the coronavirus pandemic, building on concerns reported earlier in the year. The Care Quality Commission will investigate allegations of inappropriate application of such decisions that are brought to their attention, raise cases with the relevant bodies including the General Medical Council and take action where registered providers are responsible. An interim report was published on 3 December and a final report will be published in early 2021.

Agreement to a DNACPR is an individual decision and should involve the person concerned or, where the person lacks capacity, their families, carers, guardians or other legally recognised advocates. Guidance from clinical bodies such as the British Medical Association (BMA), The Resuscitation Council UK and Royal College of Nursing reflects this. To support understanding of best practice guidance, NHS England and Improvement clinical leaders have issued a number of statements and letters to the system throughout April and May emphasising that it is unacceptable to apply DNACPR decisions in a blanket fashion to any group. All health professionals nationally are expected to follow the clear statements on the use of individual DNACPR orders.

Work is continuing to improve knowledge and understanding of issues and support colleagues across health and social care, to maintain and champion personalised approaches to care and treatment. NHS England and Improvement is also producing public-facing guidance which includes information on what a DNACPR is, how it should be applied, who should be involved and what to do if an individual or loved ones have concerns. This guidance is being reviewed and will be published shortly.

The Adult Social Care Winter Plan published on 18th September 2020 reinforces that any advance care decision, including DNACPR decisions, should be fully discussed with the individual and their family where possible and appropriate, and signed by the clinician responsible for their care. It can be found at: https://www.gov.uk/government/publications/adult-social-care-coronavirus-covid-19-winter-plan-2020-to-2021

9.We are concerned that decision-making relating to admission to hospital, in particular critical care, for adults with Covid-19 has discriminated against older and disabled people. We are also concerned that decisions made to support the capacity of the NHS to provide care for patients with Covid-19 have been made without adequate consideration of the impact on particular groups of others whose treatments have been cancelled or postponed in consequence. The Government must ensure both that clear national and local policies are in place to govern prioritisation of healthcare provision during a pandemic, and that those policies do not discriminate unlawfully. (Paragraph 83)

The Government disagrees with the premise of the recommendation that there has been discrimination in patient access to critical care. A substantive response to these concerns was published by NHS England and Improvement (NSHEI) and is available at the below link.

https://www.england.nhs.uk/2020/10/nhs-and-other-professional-bodies-response-to-sunday-times/

10. The decision to reduce care provision to certain individuals is a very serious matter, particularly in circumstances where care needs may have increased during the pandemic. The Government must justify its reasoning for the continuation of the powers to trigger easements to social care provision, and they must only continue if absolutely necessary and proportionate. (Paragraph 89)

11. If this power (which has barely been used thus far) is to continue beyond the six-month review period, the Government should issue specific guidance about meeting human rights standards in the discharge of obligations under the Care Act 2014 and develop guidance as to the content required of human rights assessments. (Paragraph 90)

The Care Act easements were intended as a tool to help local authorities continue to meet the most urgent and acute needs in the face of COVID-19. The easements relax some duties on local authorities and allow them to streamline assessments, charge for care and support retrospectively, prioritising care and support more effectively than is possible under the Care Act 2014.

The changes to the Care Act 2014 duties on local authorities are kept under regular review and the Secretary of State will suspend them when appropriate based on expert clinical and social care advice, including findings of the Chief Social Workers, in accordance with the Coronavirus Act 2020 which requires all provisions to be reviewed every two months and debated every six months. The easements were considered as part of the 6 month review of the CVA in September 2020, however the decision was made that as we head into winter, and the most difficult time of the year for the NHS, the easements still needed to be available to reduce pressure, should they be needed.

Public safety throughout this period is the Government's top priority, including for those who need care and support. Local Authorities remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights.

The Government published "Responding to COVID-19: the ethical framework for adult social care" in March 2020. The framework intends to provide support to ongoing response planning and decision-making to ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults. Under the Coronavirus Act 2020, the Secretary of State has the power to direct local authorities to comply with this guidance and with the Ethical Framework.

Our Chief Social Workers are regularly engaging with the sector through the Principal Social Worker (PSW) Network. To date, eight 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. Currently no Local Authorities are operating under these easements. From feedback received, the Chief Social Workers have been satisfied that any easements have been considered and communicated in line with the Ethical Framework for Social Care.

The Department issued revised guidance and further explanatory guidance addressing frequently asked questions on 1 September, building on lessons learned from the first wave to support councils to best meet citizens' needs. The guidance includes a notification form and asks LAs to notify the department when they plan to start operating under easements. https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities.

12. The Government must ensure that local authorities and care providers are able to meet increased care and support needs during and resulting from the pandemic. (Paragraph 91)

The Government is committed to ensuring that local authorities and care providers are supported to meet increased needs resulting from the pandemic. The Adult Social Care Winter Plan, linked above, unveiled by the Health and Social Care Secretary on 18 September, sets out the actions the Government will be taking at a national level, and the actions that every local area and care provider must be taking to keep COVID-19 at bay.

A new Chief Nurse for Adult Social Care has been announced to provide professional leadership to the social care nursing and wider workforce. Additionally, a new Adult Social Care covid dashboard has been introduced as a single point of information for local, regional and national Government to understand where infection is taking place and if measures being implemented to reduce it are effective.

In our Adult Social Care Winter Plan we committed to:

- Provide £546 million through the Infection Control Fund, set up in May, which has now been extended until March 2021, to help the care sector restrict the movement of staff between care homes to stop the spread of the virus.
- Lead and coordinate the national response to COVID-19 and provide support to local areas where needed as set out in the Contain Framework.
- Work relentlessly to ensure sufficient testing capacity; continue to deliver and review the social care testing strategy in line with the latest evidence, clinical advice on relative priorities, and available testing capacity; and improve the flow of testing data to everyone who needs it.
- Provide free PPE for COVID-19 needs to care homes and domiciliary care providers via the PPE portal until March 2021.

We acknowledge the intense pressure care providers may be under this winter. Where a provider needs to make up workforce capacity, they should consider the use of agency or other temporary staff. They should consider the use of exclusivity contracts with agencies and block booking agency workers. Providers should ensure temporary workers have access to a test before they begin their placement and routine weekly testing during their placement**.** We are also continuing to commission and fund a range of training opportunities and other programmes to help recruit people into the sector and develop career pathways, to support staff to deliver high quality care.

We have put in place funding to support providers to stop staff movement as part of the Infection Control Fund. The fund can also be used to support active recruitment of additional staff if they are needed to limit staff movement. More widely, in order to attract more people to work in the sector, and to support providers' recruitment efforts, the Government ran a National Recruitment Campaign across broadcast, digital and social media highlighting the vital work social care workers do, and launched an online recruitment tool, Join Social Care, to simplify and fast track the recruitment process. In addition, the Government continues to support free rapid online induction training through our funding of Skills for Care, to help induct and train redeployees, new starters, existing staff and new volunteers in social care services.

13. We question whether removing vital protections for children was a proportionate response to the challenges posed to the children's social care system by Covid-19. The Government must justify its reasoning for the continuation of these powers, and they must only continue if they can be shown to be absolutely necessary and proportionate (paragraph 94).

The Adoption and Children (Coronavirus) (Amendment) Regulations 2020 were laid on 24 April to support the delivery of children's social care for vulnerable children and young people during the COVID-19 pandemic. No changes have been made to primary legislation in relation to children's social care and the vast majority of secondary legislations remains unchanged. The amendments were used appropriately, and most were used rarely. These regulations lapsed on 25 September.

Following a public consultation, we made new regulations to extend a limited number of these flexibilities past 25 September to help social workers and others support vulnerable children in specific circumstances. We have published, and continue to update, detailed guidance on the temporary changes made to CSC legislation. The guidance sets out how we expect them to be used, including with senior management oversight and on the basis of an assessment of risk.

We have also provided exemptions to gatherings restrictions in Health Protection Regulations in relation to contact with children in care, or those seeking adoption.

14. The very high number of deaths from Covid-19 in care homes is a matter of deepest concern to us and engages the operational duty to secure life (Article 2 ECHR). The causes behind it are complex and we have not been able to devote the necessary time and attention to address them fully in the context of this report. It is, however, imperative that they be interrogated thoroughly in order to meet the state's

procedural obligations under Article 2. We urge the Government to ensure that addressing the issue of Covid-19 related deaths in care homes is dealt with as a priority in any inquiry or review they undertake (see chapter 9 below). (Paragraph 97)

The Government has always been clear that there will be opportunities to look back, analyse and reflect on all aspects of COVID-19. On 15 July 2020, the Prime Minister announced that this will include an independent inquiry at the appropriate time.

The Government is grateful for the Committee's consideration here of some of the range of complex issues involved in determining the eventual terms of reference of the independent inquiry. We will consider this recommendation at the right time for decisions as to the inquiry's remit to be made and will respond further to the Committee in due course.

Detention

15. Lockdown restrictions in prisons must be subject to a reasoned and transparent human rights proportionality assessment and only used for the minimum time necessary. Children should not under any circumstances be subject to lockdown restrictions which amount to solitary confinement. (Paragraph 109)

Guided by public health advice, the Prison Service took immediate and unprecedented action to implement a suite of measures to respond to the Covid-19 pandemic. Our decisions have been based on three core objectives: preservation of life; maintaining security, stability and safety; and providing sufficient capacity in prisons.

The Prison Service published its National Framework on 2 June, which sets out in detail how it will take decisions about easing Covid-19-related restrictions in prisons. It recognises that any restrictions introduced to control the spread of infection must be necessary and proportionate, and it will continue to keep them under review to respond to changing circumstances and any local or national restrictions.

The Youth Custody Service (YCS) has continued to look to increase delivery of an appropriate daily regime, access to purposeful activity, and 'time out of room' over the period when we have been forced to implement restrictions as part of the response to Covid-19. It recognises the particular importance of education in the youth secure estate and are seeking to mirror the position taken in the community with regard to the delivery of education, as much as it is possible to do so. Key aspects of regime delivery such as 'face to face' education and social visits re-commenced from mid-July at our public sector Young Offender Institutions (YOIs). Since then internal management information suggests the average time that each child spends engaging in out of room activities has increased to around 4 hours a day. The YCS remains keen to continue providing as much daily regime activities as is possible in the present circumstances, notwithstanding local variations and mitigating the impact of potential outbreaks amongst staff or children.

16. Given the risk of further waves of the pandemic, the Ministry of Justice should carry out a full evaluation of its Covid-19 policy in prisons, young offender institutions and secure training centres as a matter of urgency and issue guidance on how to respond to future outbreaks. (Paragraph 110)

The restrictions and measures the Ministry of Justice introduced as part of the initial strategy to deal with Covid-19 in prisons were necessary to save lives. The evidence suggests these measures have had a positive impact on limiting deaths and the transmission of the virus in prisons. The initial prognosis was potentially very significant numbers of COVID-19 deaths in prisons; in the first wave, however, the regime and restrictions that were put in place early appeared to work, resulting in a total number of deaths from COVID of 24 people in custody and 9 staff. MoJ recognises that the restrictions bought in to control the spread of infection must be proportionate, and will continue to keep them under review to respond to changing circumstances.

Our National Framework, which was published in June, has been guided by public health advice alongside an operational assessment of what can be achieved in custodial settings to keep staff and those in our care safe. It provides an overarching framework for managing the response to Covid-19 and is accompanied by more detailed guidance on specific areas of the regime, which establishments draw up their delivery plans against. The nature of the pandemic means the situation in any individual establishment can change very rapidly. As a result, the type of regime that is safe to deliver can vary significantly over time and across different prison types depending on their population and their infrastructure.

MoJ has an ongoing programme of work to learn from the initial response to the pandemic and refine our policies accordingly. Updated guidance to establishments has been issued about their regimes over Christmas and during the winter period. This includes the need to continue to maintain infection prevention controls, but also to ensure regimes are sustainable for a prolonged period.

During the recent period of additional restrictions in England, prisons did not return to the full lockdown of regimes as in March. We have more tools at our disposal than in March and a greater understanding of how best to respond. We have been able to maintain more open regimes, and although we had to once again suspend visits, we continued to offer them in compassionate circumstances. This included visits to children in custody. As community restrictions are lifted, we are committed to re-starting face-to-face visits wherever safe to do so.

A package of support has also been introduced to help prisoners maintain contact with loved ones while restricted regimes are in place. This includes additional phone credit; mobile PIN phones where in-cell telephony is unavailable, and free video calls. All of these measures continue to be available in custody and we are continuing to work with public health colleagues to balance the risk of infection against the negative impact on the mental and physical wellbeing of those in our care.

To ensure the needs of children and young people are suitably met, the Youth Custody Service (YCS) has worked closely with Her Majesty's Prison and Probation Service colleagues and unions to

complete the development of specific guidance for children and young people. The YCS is keen to further expand the regime offer, in a manner which is safe and sustainable, increasing flexibility of approach whilst mirroring the position taken in the community with regard to education as much as possible. The YCS has also commissioned a piece of academic research and discussions with Governors to evaluate and identify lessons learned during the Covid-19 period. Findings will be used to inform both Covid-19 recovery planning and the ongoing transformation of the children and young people's secure estate.

17. While short scrutiny visits by the prisons' inspectorate have proved an important source of information on what has been happening inside detention settings during the pandemic, continuing restrictions on inspections mean that human rights abuses may be going undetected in these settings. It is imperative that full inspections resume, safely, as soon as possible. (Paragraph 112)

We value the external scrutiny provided by Her Majesty's Inspectorate of Prisons (HMIP) and have been clear from the onset of the COVID-19 pandemic that it should not be a barrier to HMIP fulfilling its statutory duty to report on the treatment and conditions of those held in custody. In April 2020 HMIP paused its regular inspection methodology and introduced the Short Scrutiny Visit methodology to maintain scrutiny of the estate in response to COVID-19. The new methodology allowed the continuation of independent scrutiny, without adding an unreasonable burden to establishments who were facing an unprecedented challenge. Short Scrutiny Visits involved a short one day announced monitoring visit focusing on the response to COVID-19, and thematic summary reports by types of establishment were published highlighting the key themes from three to four visits.

HMIP's Short Scrutiny Visits were complemented by the work of other scrutiny bodies who have implemented new arrangements to provide some level of scrutiny during this period. For example, Independent Monitoring Boards put in place remote monitoring and introduced a 0800 freephone number to enable prisoners to contact their local Board directly. The Prisons and Probation Ombudsman continued to investigate fatal incidents and complaints, using a revised operating model, which included the introduction of a helpline which was promoted on prison radio.

Following the publication of the National Framework for Prison Regimes and Services in June 2020, HMIP adapted their monitoring approach to enable more effective independent scrutiny of individual establishments whilst they transitioned through Prison Regime Stages. Scrutiny Visits (SVs) were introduced in August 2020 which, when compared with Short Scrutiny Visits, provide more in-depth evidence as they involve a two-day visit and a one-day detainee survey. During SVs, HMIP ask questions aligned to their existing human rights-based Expectations to guide their approach and get to the heart of issues quickly during their visit. The selection of these guidance questions followed a human rights scoping exercise specific to COVID-19 and consultation with relevant Government departments, inspection partners and NGOs. The reports published following SVs focus on individual establishments and provide additional accountability through the provision of recommendations. Her

Majesty's Prison and Probation Service (HMPPS) follow up approximately six weeks after the visit to review the progress made by the establishment.

HMIP has worked collaboratively with the Ministry of Justice and HMPPS throughout this process to ensure that its approach provides effective external scrutiny and does not put detainees, prison staff or Inspectorate staff at unreasonable risk of harm. Since April, HMIP has visited over 40 establishments and has published 23 reports. We welcome the valuable insight and transparency provided through these reports and, when it is safe to do so, will support the restoration of inspections. Following the recent Government announcement of national restrictions across England from 5 November, HMIP have confirmed that they will continue with their programme of SVs. We expect that the SV methodology will be in place for the foreseeable future and will update the Committee when this changes.

18. Blanket visiting bans in prisons are incompatible with the right to family life (Article 8 ECHR). Any restriction on visiting rights must be shown to be necessary and proportionate in each individual case. As soon as it is safe to do so, prison visiting must resume as a matter of priority in all prisons. (Paragraph 115)

The decision to stop prison visits was not taken lightly – it was based on public health advice and mirrored the restrictions faced by the whole country. The Government is mindful of the difficult impact this had on both mothers in prison and their loved ones. There is no question that the measures helped save lives.

The plans to resume social visits in a COVID secure manner began as soon as the restrictions allowed. They involved preparing a central delivery model which guided individual establishments to prepare and then submit the risk assessments needed to safely resume visits in their prisons. The first social visits re-started on 8th July.

Up to two adults and one child or one adult and two children are now permitted to visit their loved-one for a minimum of 45 minutes in prisons where it is safe to do so.

19. In accordance with the Government's commitments, in-cell telephones and facilities to make video calls must be installed in all prisons and young offenders' institutions without delay, so that in the event that it is necessary to restrict prison visits again in the future, the technology is available to allow prisoners to maintain contact with their families and loved ones. (Paragraph 116)

To help women remain in contact with their families, the Prison Service are giving them an extra £5 a week PIN credit and ensured that all prisons without in-cell telephony were issued with locked mobile handsets.

On 15 May, the introduction of secure video calls to prisons and young offender institutions across England and Wales was announced. The female estate was prioritised for the roll-out.

Video calls are now available in over 100 prisons. Over 40,000 video calls have been completed so far. Secure video calls provide another option for families, including those with children of all ages, to stay in touch and are being offered at no cost to families at the current time.

20. At the time of writing the Government had not yet responded to our July 2020 report "Human Rights and the Government's response to COVID-19: children whose mothers are in prison". We urge them to commit to implementing our recommendations from this report in full at the earliest opportunity. (Paragraph 120)

The Government's response to the JCHR report "Human Rights and the Government's response to COVID-19: children whose mothers are in prison" was sent from Lucy Frazer, Minister of State for Justice on 2nd September and was published on 10th November. It can be accessed here: https://committees.parliament.uk/publications/3356/documents/32299/default.

The Government acknowledges the importance of upholding the Article 8 rights of prisoners and their children and welcomes the report on the right to family life of children whose mothers are in prison, and their follow-up report on the impact of the Government's response to COVID-19.

Throughout this period, we have remained committed to supporting all mothers in custody and ensuring they have access to family contact during this difficult period, as well progressing with the recommendations made in Lord Farmer's Review for Women. We continue to recognise the importance of prisoners' family and significant other relationships to improve prisoners' health and well-being, and the inevitable and considerable impact that suspended social visits has on the wellbeing of mothers and their children. Family contact provides a crucial lifeline for those in our care and we are doing all that we can to ensure that prisoners can maintain contact despite these exceptional circumstances.

We share the Committee's interest in having greater access to data on the number of mothers in prison and the number of dependent children in the community. We are looking into how best to collect and publish this information in order to improve our policy and practice for all primary carers in prison.

We would like to update the Committee on the reintroduction of social visits in the Women's Estate. From 2 December, establishments in tier 1 and 2 areas can reintroduce social visits, but sites in tier 3 cannot. Individual visits to stage 3 prisons may be permitted for compassionate reasons with the governor's authorisation. Social visitors living in tier 3 areas cannot attend a visit to any location unless it's for a compassionate reason.

21. We are currently awaiting the Government's response to both our previous reports on the detention of young people who are autistic and/or have a learning disability. Those reports exposed that young people in these settings were subjected to significant and frequent violations of their human rights. Our recommendations in

these reports must be implemented in full as matter of urgency to bring these human rights violations to an end. (Paragraph 125)

On Thursday 22 October, we published the Government's formal response to the recommendations made by the Joint Committee on Human Rights in its report 'The detention of young people with learning disabilities and/or autism', published on 1 November 2019, and those made in its report 'Human Rights and the Government's response to COVID-19: The detention of young people who are autistic and/or have learning disabilities', published on 12 June 2020.

We have carefully considered the Committee's recommendations and are accepting in full or in principle the vast majority. Protecting the rights of people with a learning disability and of autistic people is a matter of the utmost importance to the Government and we are clear that rights must be upheld regardless of wider circumstances, no matter how unprecedented.

As we set out in our response on 22 October, on 22 September 2020, NHS England and NHS Improvement wrote to NHS and independent sector providers of mental health, learning disability and autism inpatient care stating that they must allow families to visit unless a risk assessment has been carried out that indicates it would be unsafe to do so. NHS England and NHS Improvement regional teams are monitoring the implementation of this guidance and addressing any issues that are raised. NHS England and NHS Improvement would expect patient and family members to be informed where visits cannot happen and with clear reasons given for this. NHS England and NHS Improvement's expectation is that any decisions not to allow visits should be kept under regular review.

NHS England and NHS Improvement has, throughout the pandemic, stated that visits should continue where there is a clear need to do so. NHS England and NHS Improvement has published guidance to support providers and ensure that decisions about visits are made on a case by case basis with practical considerations being made to minimise the risk of infection to patients, staff and visitors.

At the start of the pandemic, the CQC took a decision to halt routine inspections. However, throughout the COVID-19 pandemic they have continued to inspect where there are whistleblowing concerns or other evidence that people might be at risk of harm. The CQC commenced a full programme of focussed responsive inspections in May 2020. They have and will continue to go into services during the COVID-19 pandemic where they are alerted to serious concerns about people's care and where there are concerns about human rights breaches, as well as crossing the threshold where required.

In September 2020 the CQC began a transitional inspection programme, to move past the crisis period. They will use learning from during this period to inform their approach and will be working towards reinstating a programme of full visits in all settings.

22. The continued ability of the DHSC to bring changes to the Mental Health Act 1983 into force after the first six months of the CV Act must be justified or the powers repealed. If the powers are maintained in any way, the DHSC must publish the guidance to accompany them so that it is possible for there to be scrutiny of their

provisions. The Government should also make clear what steps it is taking to bring forward the White Paper promised to respond to the Independent Review of the Mental Health Act 1983. (Paragraph 128)

The emergency changes to the Mental Health Act were designed to only be switched on if the mental health sector was experiencing unprecedented resource constraints i.e., by relaxing certain statutory requirements, which would result in patients' safety being put at significant risk. However, as part of the overall approach to keep interventions as limited as possible, on 25 November the Section 10 (Schedule 8) Mental Health Provisions in the Act have been expired following debate in both Houses. The provisions relating to patients involved in the criminal justice system will also be removed in Wales. This was decided as part of the 6-monthly review of the Coronavirus Act.

The provisions of the Coronavirus Act, referred to as "easements", would allow for Approved Mental Health Professionals (AMHPs) to apply to detain someone on the advice of one registered medical practitioner rather than two. This can only take place if the normal procedure is impractical or causes undesirable delay. They also allow the temporary detention of individuals, pending an application for detention under the MHA, would be extended. This means that, in cases where people who are already inpatients in hospital are detained under section 5 of the MHA, and for those who are taken to a place of safety by a police officer and subsequently detained there, that they can held for around twice the normal amount of time.

These powers have not been commenced in England and therefore no authorities have used them. The possibility that these provisions could be brought into force at any time with minimal notice is a threat to vulnerable individuals who rely on these protections.

On 30 September 2020, the Secretary of State for Health and Social Care announced that these provisions will be removed from the Act for England. Regulations were laid on 21 October and debated in the House of Commons (18 November) and the House of Lords (25 November). The motions were approved in both Houses. These provisions have not been required due to the commitment and resilience of NHS staff and because of various adaptations that have been made, and because The Government's response has ensured that the NHS has been properly staffed and not overwhelmed in the way that was initially concerned. These adaptions include legal guidance which sets out how the Act's Code of Practice can be interpreted during this period (e.g. the electronic delivery of statutory forms and use of video technology for medical assessments).

The Government remains committed to publishing the White Paper in response to Sir Simon Wessely's Independent Review of the Mental Health Act 1983. The White Paper will set out the Government's response to the 154 recommendations put forward in the Review and pave the way for reform of the act. We aim to publish the paper by the end of this year.

23. The Mental Health Tribunal should be supported to be able to discharge its functions with hearings conducted by three member panels, by video, wherever possible, and to enable the return of pre-hearing examinations, to minimise the

impact of what has been a substantial diminution in the safeguards provided by the Tribunal. (Paragraph 130)

The Government is mindful of how changes to hearings might impact individuals and considers that the measures taken are necessary and proportionate to ensure that the Tribunal can continue to operate safely while giving due regard to public health. These emergency measures were introduced to limit the spread of the virus while helping the Tribunal to manage its workload during the pandemic and maintain access to justice. As with other provisions of the Act, the application of these measures is reviewed carefully.

The measures were originally introduced through two Pilot Practice Directions, issued by the (then) Senior President of Tribunals (SPT) (Sir Ernest Ryder) on 18 March. Both Practice Directions have subsequently been amended and renewed by the SPT on 14 September 2020, with the approval of the Lord Chancellor in accordance with section 23 of the Tribunals Courts and Enforcement Act 2007. They are:

- The Amended Pilot Practice Direction: Health, Education and Social Care Chamber of the First-Tier Tribunal (Mental Health); (the "amended Mental Health Tribunal PD") and
- The Amended General Pilot Practice Direction: Contingency Arrangements in the First-Tier Tribunal and the Upper Tribunal (the "amended general PD")

The amended Mental Health PD provides, among other things, that whilst it remains in force:

- Certain proceedings in the Chamber may be determined on the papers without a hearing provided (i) the judge is satisfied that doing so is in accordance with the overriding objective; and (ii) the patient or his or her representative agrees in writing;
- Pre-hearing examinations will be deemed to be not practicable unless the Chamber President, Deputy Chamber President or an authorised salaried judge directs otherwise in the exceptional circumstances of a particular case, having regard to the overriding objective and any health and safety concerns;
- The composition arrangements are amended so that a judge alone may make any decision as directed by the Chamber President, Deputy Chamber President or an authorised salaried judge.

The amended general PD provides that where a Chamber's procedure rules allow decisions to be made without a hearing, decisions should usually be made in this way, provided this is in accordance with the overriding objective, the parties' ECHR rights and the Chamber's procedure rules.

It is also worth noting that the Practice Directions did not introduce new powers: the powers were already available to the Tribunal and there were existing safeguards which are reflected in the Practice Directions. For example, the overriding objective and the parties' ECHR rights are explicitly mentioned in the amended general PD as being key to any decision not to hold a hearing.

The practice of the Tribunal has varied as circumstances have developed, to lessen the impact of the pandemic response. For example, although the Tribunal's composition arrangements have remained

the same since 18 March, the tribunal began listing 3-person panel remote hearings again in June, after having trained judicial office holders on conducting video hearings.

The emergency measures set out in the Practice Directions are time limited and remain in place for six months from the date they were made, unless renewed. The Directions make it clear that they may be reviewed prior to expiry and may be revoked at any time, and they have been reviewed as circumstances have changed and the measures have been adapted.

24. We agree with Mr Justice Hayden that Deprivation of Liberty Safeguards (DoLS) provide 'indispensable safeguards' for those who are subject to them. Indeed, DoLS are more important than ever when those who lack capacity to consent to new restrictions on their freedoms may be subjected to such new restrictions intended to protect their right to life. DoLS provide a framework for verifying that such restrictions are necessary and proportionate. It is vital that DoLS authorisations are in place to ensure persons deprived of their liberty on the ground of mental incapacity have safeguards in place and the means to challenge their deprivation of liberty. (Paragraph 133)

25. It is essential that Liberty Protection Safeguards are introduced in April 2022 and that there is no further delay. Resources must be allocated to ensuring that the new safeguards are implemented effectively, and that all those involved are properly trained, within the new timetable. (Paragraph 134)

All aspects of the Mental Capacity Act 2005 remain in force. The principles of the MCA and the safeguards provided by the Deprivation of Liberty Safeguards (DoLS) still apply. We agree with the committee that DoLS are important safeguards for people without relevant mental capacity, which is why they are unchanged by emergency Coronavirus legislation. The Government will continue to make the case that protections offered by DoLS must not be deprioritised before the implementation of the Liberty Protection Safeguards (LPS).

All parts of the system that administer DoLS are under pressure as a result of the pandemic, as are adults without mental capacity, their family and friends. We are working closely with relevant stakeholders to support the sector with guidance and increased funding. We are also working with the National Mental Capacity Forum to ensure that guidance issued by the Department is fit for purpose and of practical help to all stakeholders. We last updated our guidance on the 15th of October.

We also agree that implementing LPS is important. That programme of work is a priority for Government. We are making good progress towards a public consultation in Spring 2021 and are aiming for full implementation by April 2022. As Helen Whately MP, Minister of State (Minister for Care) said in her Written Ministerial Statement on LPS, in July, it is paramount that implementation of LPS is successful so that the new system provides the safeguards needed.[1] The Government's

[1] https://questions-statements.parliament.uk/written-statements/detail/2020-07-16/hcws377

overall objective on LPS remains to ensure implementation of an effective system in particular for those whose lives will be most affected by it.

26. We hope that future DHSC guidance on visiting in care homes will allow for a more proportionate approach to visiting which minimises any necessary interference with residents' right to family life (Article 8 ECHR). The Government must ensure that care homes are not implementing blanket bans on visiting. Restrictions on visiting rights must only be implemented on the basis of an individualised risk assessment and such risk assessment must take into account the risks to the person's emotional wellbeing and mental health of not having visits. (Paragraph 136)

Receiving visitors is a very important part of care home life. Maintaining some opportunities for visiting to take place is critical for supporting the health and wellbeing of residents and their relationships with friends and family.

This guidance is intended to enable and encourage providers – supported by local professionals, families and the wider community – to provide appropriate visiting opportunities, that balance these important benefits against the continued priority of preventing infections to protect staff and residents.

We recognise how important it is to allow care home residents to safely meet their loved ones, especially for those at the end of their lives. We appreciate the particular challenges visiting restrictions pose for people with dementia, people with learning disabilities and autistic adults, amongst others, as well as for their loved ones.

When developing their visiting policies, providers should undertake individualised risk assessments, to assess the rights and needs of individual residents, as well as any specific vulnerabilities which are outlined in the resident's care plan, and to consider the role that visiting can play in this.

On Thursday 5 November we published guidance to enable COVID-secure visits to take place for care home residents while national restrictions are in place.

The guidance will enable care home providers, families and local professionals to work together to find the right balance between the benefits of visiting on wellbeing and quality of life, and the risk of transmission of COVID-19 to vulnerable residents and social care staff.

The guidance can be found here: https://www.gov.uk/government/publications/visiting-care-homes-during-coronavirus/update-on-policies-for-visiting-arrangements-in-care-homes

27. Where there is no reasonable prospect of removal within a reasonable timeframe, immigration detention ceases to be lawful. The Home Office should keep cases under review to ensure that individuals are not detained unlawfully. (Paragraph 140)

We detain for the purpose of removing from the UK people who have no legal right to be here but who refuse to leave voluntarily. Due to the complex range of factors involved, the suitability of detention must be appraised on a case by case basis, and detention is only lawful when there is a realistic

prospect of removal within a reasonable timescale. The system operates with a presumption in favour of liberty, and there must be strong grounds for believing that a person will not comply with conditions of immigration bail for detention to be justified.

If a decision to detain has been taken, the Home Office keeps all cases under ongoing review, and there are safeguards in place to ensure all cases receive proper and continuing scrutiny to ensure individuals are not detained unlawfully, including Case Progression Panels after three months, and Automatic Bail referrals which take place for non-Foreign National Offenders four months from the point of initial detention. These are additional to the rights of all detained people to apply for immigration bail at any point. During the pandemic, bail hearings that would previously have been held in court have taken place via remote means, using video link or telephone meeting technology.

28. For those individuals in immigration detention, as in other detention settings, steps taken to prevent the spread of the disease into and within detention settings should be reviewed at regular intervals and particular care should be taken in respect of individuals who are considered to be especially vulnerable to Covid-19 (Paragraph 141)

The Home Office takes the welfare of detained individuals in its care very seriously. Immigration Enforcement is responding to the unique circumstances of the coronavirus outbreak and following the latest guidance from Public Health England (PHE). On 26 March the High Court ruled that the Home Office was taking sensible, precautionary measures in relation to COVID-19 and immigration detention. These are in line with the PHE and Public Health Scotland guidance, and are in place to protect staff and those detained. We consider the Court's findings a strong endorsement of the steps we have taken so far and continue to take.

There has been no change to the Adults at Risk in immigration detention policy (AAR) during the COVID-19 pandemic. However, supplementary guidance was issued to take account of the PHE advice, including the consideration of medical circumstances (including respiratory conditions) which could potentially elevate an AAR in detention level. All detained individuals who are assessed to have any of the underlying health vulnerabilities listed in the PHE guidance are automatically treated as being in the vulnerable category under the AAR policy.

The continued detention of each individual was then assessed in line with the existing policies and PHE advice, the availability of return routes, and individual circumstances, including risk to the public. Interim guidance in March set out the action that case workers should take in response to COVID-19. This guidance was subsequently published and is available on Gov.uk.

The Home Office also issued, and subsequently published, clear guidance for suppliers and Home Office staff operating in immigration removal centres (IRCs) and residential short-term holding facilities (RSTHFs) about the principles for managing COVID-19. This guidance covers the strategy for shielding those individuals in detention who may be vulnerable to the effects of COVID-19 and

sets out actions that staff should take in response, including the management of asymptomatic individuals. This guidance is kept under review and will be revised as and when necessary. Due to the increased rate of infection in the community we have recently re-evaluated these measures. Consequently, since 21 October all staff and visitors to IRCs and STHFs are required to wear a face mask at all times when undertaking direct contact duties with those detained, and when in the main centre or holding facility. This is an additional step to other protective measures already in place.

With regard to those who may need to self-isolate, full 'reverse cohorting' consistent with PHE guidance is being practised in all IRCs. Upon arrival, all detained individuals are accommodated in an area dedicated to new arrivals which is separate from the rest of the IRC population and staffed by a dedicated team. They are then 'cohorted' with others arriving over the course of a week. At the end of that week, those individuals remain separated from the rest of the IRC population for a further 14 days. A rotational intake strategy amongst the IRCs has ensured that new arrivals do not come into contact with the existing population for the minimum prescribed period of 14 days after arrival. Anyone detained in an IRC who develops symptom consistent with COVID-19 is isolated in their own room within an isolation area. Those individuals who are severely unwell will be transferred to appropriate healthcare facilities.

In taking these actions, we have also recognised the risk to the mental health of the detainees. Measures have been introduced, including in-room activity and socially distanced group interactions, and increased access to and engagement with staff. All individuals in IRCs are provided with a mobile phone and have access to landline telephones on request, fax machines, email and video calling facilities which can be used to contact friends and families while social visits are paused. Additional mobile phone credit (paid directly to the phone or through top-up cards) is also being provided.

29. The JCHR's previous report on immigration detention highlighted the importance of making detention decisions independent of the Home Office to ensure that the initial decision to deprive a person of their liberty is robust and fully justified. The Committee recommended that "in cases where detention is planned there should be properly independent decision-making" and that detention "decisions should be pre-authorised by a person or body fully independent of the Home Office." We urge the Government to implement this recommendation: in the context of the pandemic it is more important than ever, given the risk to immigration detainees' health. (Paragraph 142)

The Government is committed to using detention only where necessary, and for the shortest possible period. The Detention system operates with a presumption of liberty and there are safeguards in the system to ensure all decisions to detain are fully justified on a case by case basis and are subject to ongoing scrutiny.

The Detention Gatekeeper function provides robust scrutiny of the suitability of detention before initial detention is authorised. Introduced in 2016 following a recommendation made in Stephen Shaw's 2016 Review into the Welfare in Detention of Vulnerable Persons, it operates independently from all referring teams and detained casework commands to assess a person's suitability for detention and consider any vulnerabilities on a case-by-case basis. Since its inception, the Detention Gatekeeper has rejected more than 3,250 referrals for detention. We are working to reference the Detention Gatekeeper function within our published detention policies, and we expect this to occur in 2021.

Case Progression Panels (CPPs) operate as an additional safeguard to scrutinise the use of ongoing detention at -three-month intervals and provide advisory recommendations to casework teams. In response to a recommendation in Stephen Shaw's 2018 review, the Home Office commissioned a pilot in spring 2020 to introduce external members onto these panels. Following the success of this pilot, our intention is to immediately begin to formalise the presence of permanent independent panel members within the CPP process. We are working to reference Case Progression Panel independence within our published detention policies and we expect this to occur in 2021.

Independent judicial oversight of detention decisions is provided by initial bail hearings which are usually listed within three to six days of detention being authorised. Subsequently, a detained person can apply for immigration bail at any point of their choosing, and legal support is available to all detained people. Automatic bail referrals are an additional safeguard to ensure that there is independent judicial oversight even when an individual does not make a bail application themselves. For non-Foreign National Offenders, these take place four months after the point of initial detention, and do not affect the rights of all detainees to apply for bail at any time.

It is the view of the Home Office, that the cumulative impact of these mechanisms provides sufficient oversight of detention decisions, both at the point of initial detention, and for the duration of the period an individual may be detained.

30. There is no safeguard as to the length of storage of the biological information collected under powers relating to potentially infectious persons, nor safeguards relating to its destruction, and future use. The Coronavirus Act should be amended to ensure this medical data is subject to adequate safeguards. (Paragraph 148)

The Government is mindful of the importance of effective and safe storage of any information collected under the powers of the Act. The powers of Section 51, schedule 21 of the Coronavirus Act enable the imposition of proportionate requirements so that a Public Health Officer can require potentially infected persons to attend a screening and assessment centre and/or provide a sample for testing, if it is in the best interests of that person to do so, or to prevent the spread of the disease.

The use of these powers in England is continuously monitored centrally by Public Health England and the Department of Health and Social Care. Their use by the Devolved Administrations is a matter for them.

As of 25 November, these powers have been used ten times. For reasons of patient confidentiality, precise, identifiable details cannot be made public. Wide safeguards are included in the legislation, including the requirement that certain powers are only exercisable when it is necessary and proportionate in the interests of the person, for the protection of others or for the maintenance of public health; and that in certain cases immigration officers and constables must consult a public health officer before exercising powers where practicable to do so. It is recognised that many PHOs will not be able to take biological samples as they do not have the necessary equipment or clinical expertise, and in any event, are unlikely to be physically present at the suitable place where the person has been taken. Such samples will only be taken by doctors, nurses and any other healthcare professional designated by the Secretary of State, as instructed by a PHO.

31. It is hoped that the vast majority of "potentially infectious" people will comply with public health advice, and that legal enforcement will not be necessary in such cases. In such circumstances, the Government must justify the continued need for an executive power to deprive a wide cohort of persons of their liberty. Article 5(1)(e) ECHR allows states to detain individuals "for the prevention of the spreading of infectious diseases … ". Although the case law on Article 5(1)(e) is very limited in this context, it is clear that the courts will consider whether less severe measures have been considered and found to be insufficient to safeguard the public interest, before using detention as a last resort. The Government must justify why it is necessary and proportionate for these extraordinary powers to remain law. In particular, the Government must provide evidence to Parliament that these powers are necessary for the prevention of the spread of Covid-19 and that the power to prosecute is not being misapplied. In the absence of any clear evidence to support the retention of these powers, they ought to be repealed. (Paragraph 154)

The Government is committed to ensuring that legal enforcement is only used in such cases when necessary. The powers under Schedule 21 are necessary to help manage the spread of coronavirus by providing Public Health Officers (PHOs), police constables and immigration officers with the tools they will need if people do not comply with, for example, requests to undergo screening and assessment, or requests to self-isolate. The powers support a strategic response to the pandemic, and ensure the risk of onward transmission is minimised. As social distancing measures are relaxed, these powers enable a targeted approach to be applied.

To date, Public Health Officers (PHOs) have used the powers under Schedule 21 10 times and immigration officers have not used them at all. Whilst it is true that the Crown Prosecution Service (CPS) review found that all early charges under the Coronavirus Act were made incorrectly by the police. This CPS review process is the safeguard built into the system to mitigate against this sort of situation. The CPS has ensured that such individuals were charged with the correct offence. The CPS continues to provide a valuable service by reviewing all charging decisions related to the new and fast evolving legislation in this area.

32. In order to allow Parliament to assess the Government's use of these significant powers, the Government must publish data setting out the number of individuals who

have been subject to these powers, the number of individuals who have been charged under the new offences, and any successful appeals there have been against the use of these powers. (Paragraph 155)

The Government produces, as part of the Two Monthly Reports on the Act, information which shows how many times Public Health Officers (PHOs) have used the powers under Schedule 21. The fourth report was published on 1 December. and can be found at: Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020 - GOV.UK (www.gov.uk)

The powers under Schedule 21 have been used 10 times by PHOs. CPS also produce a review which sets out how the police have been enforcing the powers under the Act. Octobers report can be found at: https://www.cps.gov.uk/cps/news/octobers-coronavirus-review-findings

Although immigration officers have not used the Schedule 21 powers to date, they would be required to record details of the occasions on which they were exercised.

33. There are some safeguards built into the powers, but if these powers are to be retained beyond the six-month review, these safeguards should be strengthened

a) The definition of "potentially infectious person" should be reviewed to ensure that its scope is not too wide and the powers are not open to abuse.

b) The Act provides that these powers may only be exercised where necessary and proportionate in the interests of the person, for the protection of other people, or the maintenance of public health. The Government should ensure its guidance is up to date and available for officers regarding the application of this test.

c) There should be minimum requirements for the designation of a "public health officer" to ensure only experienced and qualified persons are able to exercise such powers.

d) There should be robust safeguards as to the length of storage of the biological information collected, its destruction and future use.

e) The only right of appeal provided for is in relation to powers exercisable post-screening and assessment. Individuals should be given a right of appeal to the Magistrates Court in relation to all powers, particularly given the option of judicial review is not an immediate and effective remedy for detained persons.

f) Guidance from the Department for Health should be incorporated into the Act to state that if someone lacks the capacity to make an appeal, it can be made by someone on their behalf even if the person is not objecting or does not understand they can make a challenge. (Paragraph 156)

The Government agrees that the definition of "potentially infectious persons" is broad. It was felt that this was necessary due to the challenge brought by the scale, complexity and fast spread of this virus, particularly in the early days when so little was known about the virus and the situation was changing so rapidly. Public Health Officers are highly experienced, skilled, senior professionals, with specific experience in management of infectious disease cases. They are obliged under their professional

registration to act within clear boundaries of their professional expert competency. They apply their expertise and the latest information they have on the spread, symptoms and effects of the virus.

On 2 April 2020, nineteen PHOs were appointed by the office of the Parliamentary Under Secretary of State for Prevention, Public Health and Primary Care, Jo Churchill MP. PHOs were provided with a designation letter and full guidance to support their functions. These PHOs were identified and vetted by PHE's Medical Director (Yvonne Doyle) to ensure they have the correct skill set and were appropriately based across regional geographies to allow for rapid decision making with an appreciation for local systems. In addition, these PHOs were vetted by the office of the responsible officer who oversees the appraisal process of registered public health consultants and fitness to practise.

Immigration officers' powers to direct and detain potentially infectious persons are time-limited and subject to robust oversight and authorisation processes. Consequently, we do not consider that a right of appeal in relation to these powers is a necessary or proportionate remedy.

Immigration officers will only exercise the powers at the direction of the relevant public health authority.

Immigration officers may direct, and if necessary, detain a potentially infectious person for a reasonable period to enable arrangements to be made to take them to a suitable place for screening and assessment. They may also keep a person at such a place for up to 3 hours and, should it be necessary to extend the period of detention to enable a public health officer to carry out their screening and assessment functions, the period may only be extended for a further 9 hours with the authority of an officer not below the rank of chief immigration officer.

As these are exceptional powers being used, the Crown Prosecution Service (CPS) is continuously reviewing all of the charges brought under both the Coronavirus Act and public health regulations. The Government continue to work with the NPCC and College of Policing to ensure that police officers have guidance to correctly charge cases under coronavirus legislation.

Contact Tracing

34. It is welcome that the Government decided to stop the development of the centralised model for their contact tracing and is now working on a decentralised model instead. However, privacy issues remain. To build trust with users, which has been shaken by high-profile missteps, the Government should introduce legislation which defines what data will be collected, how long it can be held, when it will be deleted. Such legislation should include a ban on contact tracing data being shared for any purpose other than combating the spread of Coronavirus. (Paragraph 167)

35. Manual contact tracing is the main component of the UK's test, track and trace system. This still involves data being collected; indeed, that data is arguably more sensitive than that collected by the app. Whether that data is gathered digitally or

manually, the legislation should limit how long manually gathered data can be held, define what type of information can be gathered, confirm when it will be deleted, and restrict it from being shared for any purpose other than combating the spread of Coronavirus. (Paragraph 168)

The Government agrees that privacy with regard to data collection is important and feels there are sufficient measures in place for this not to require legislation. The Data Protection Impact Assessment (DPIA) for the app has been published and is being updated as the app develops.[2]The App DPIA can be found at: https://www.gov.uk/government/publications/nhs-covid-19-app-privacy-information/the-nhs-test-and-trace-app-early-adopter-trial-august-2020-data-protection-impact-assessment

The App is completely anonymous and does not hold Personal Data. If an individual gets a request to self-isolate on their App, only the individual is aware of the notification. The App Privacy Notice can be found at: https://www.gov.uk/government/publications/nhs-covid-19-app-privacy-information/nhs-test-and-trace-app-early-adopter-trial-august-2020-privacy-notice

Manual contact tracing is carried out by the Contact Tracing and Advice Service (CTAS). They will contact an individual who has tested positive and request them to provide information about close contacts they have had. The privacy notice contains the information on how their data is used.

If a person tests positive for coronavirus, they are contacted by the contact-tracing service and asked to confirm details such as their name, date of birth, sex, ethnic group, NHS number, address, and phone number. They are also asked to input details of COVID-19 symptoms, details of whether they are clinically vulnerable and also the details of close contacts.

The personal information collected and used by the contact-tracing service for someone who is a positive case will be kept for 8 years, which is standard practice for the length of time medical data is kept. Close contacts personal information will be kept for 5 years. At a time when it was difficult to predict how long the pandemic would last, five years was considered long enough to allow sufficient analysis to understand how many people were affected and how the disease spread, while at the same time acknowledging that it was not necessary to hold data of close contacts as long as that for personal medical information. It is possible that, over time, someone may be a close contact of more than one positive case and so one or more records may be held. Each of these are kept separately for 5 years.

Children and the right to Education

36. The Government has obligations to ensure that all children have access to education and that the best interests of the child are a primary consideration in

[2] https://www.gov.uk/government/publications/nhs-covid-19-app-privacy-information/the-nhs-test-and-trace-app-early-adopter-trial-august-2020-data-protection-impact-assessment

decision making. Thus, the provision of education and the best interests of the child should be at the forefront of policy and decision making. (Paragraph 177)

37. Our evidence suggests that whilst school closures have affected all children, these closures have had different impacts for different groups of children. The effects of these different impacts - and how best to mitigate against unwanted impacts - should be factored into the Government's policy and decision-making. The disparity in education accessed by different groups of children suggests that there should have been better guidance to schools from the Government around continuity of education. The unequal access to education for disadvantaged children is of real concern and the Government must ensure that it does not lead to wider inequality in society. (Paragraph 178)

The dynamic situation in the UK with regards to rates of transmission of the virus, what the evidence tells us, and the restrictions that different areas are under means that we have needed to develop guidance for schools on a range of issues over time as we learned more about the virus. The Department for Education has continued to develop and update guidance in response to feedback from school leaders and stakeholders, and to ensure that it reflects the most up-to-date medical and scientific information to make sure that teachers, parents and young people are as well-informed as possible. The Government is continuing to prioritise education and is committed to ensuring that schools and colleges remain open as long as it is safe to do so. Current policy in England is that all education settings will remain open in all tiers.

During the earlier national covid restrictions in the spring, schools remained open throughout to priority groups (vulnerable children and the children of key workers). We also asked schools to support those pupils remaining at home. On 19 April the Department published information, guidance and support for teachers, school leaders and parents on remote education.

From 1 June primary schools began to welcome back more children, focusing on specific year groups being educated in small 'bubbles' and from 15 June secondary schools welcomed back year 10 and 12 students to spend some time in school in small groups. Returning to school is vital for children's education and for their wellbeing. Time out of school is detrimental for children's cognitive and academic development, particularly for disadvantaged children, in terms of current education levels and future ability to learn. On 2 July the Department for Education published guidance, developed with advice from PHE, to support schools to fully reopen and remain open throughout the autumn term. In line with this guidance, schools are expected to have the capacity to offer immediate remote education where a class, group or a small number of pupils need to self-isolate or where local restrictions require pupils to remain at home. The Department for Education expects schools to consider how to continue to improve the quality of their existing curriculum, for example through technology, and to have a strong contingency plan in place for remote education provision.

We have now published a temporary continuity direction which makes it clear that schools have a duty to provide remote education for state-funded, compulsory school-age children (and children under that age, whom it is expedient to educate with pupils who are of that age) who do not attend

school due to attendance being contrary to government guidance or legislation about coronavirus (COVID-19). This came into effect on 22 October 2020. Guidance for teachers on the minimum standards for remote education was published on 3 December 2020. It can be accessed here: https://www.gov.uk/guidance/get-help-with-remote-education

We recognise that all children and young people have had their education disrupted as a result of coronavirus (COVID-19), but that disadvantaged and vulnerable groups are likely to have been hardest hit. This is especially important in light of the rising evidence showing the impacts of this disruption on the attainment gap.

The Government has announced a catch-up package worth £1bn, including a 'Catch-Up Premium' worth a total of £650m to support schools to make up for lost teaching time. Our expectation is that this funding will be spent on the additional activities required to support children and young people to catch up after a period of disruption to their education. As part of this catch-up package, we have also announced a new £350m National Tutoring Programme for disadvantaged pupils. This will increase access to high-quality tuition for the most disadvantaged young people, helping to accelerate their academic progress and tackling the attainment gap between them and their peers.

To support disadvantaged children and young people to access remote education, the Department for Education has so far spent over £195 million to provide laptops and tablets, internet connectivity support, and access to online education platforms. We have delivered over 100,000 laptops and tablets to disadvantaged children during the autumn term. This is in addition to the over 220,000 provided earlier this year.

Schools continue to receive additional funding through the pupil premium – worth around £2.4 billion annually – to help them support their disadvantaged pupils (those claiming free school meals in the last six years, looked-after and previously looked-after children and others who their schools feel would benefit from support, such as children in touch with a social worker and young carers).

The Department of Education announced the covid workforce fund on 27 November. It is designed for schools and colleges facing significant funding pressure, and will cover the costs of high levels of staff absences over a minimum threshold to ensure schools and colleges can remain open.

Furthermore, a new £170m Covid Winter Grant Scheme will be run by councils in England. This will allow children and families will get extra support this winter, to ensure vulnerable households do not go hungry or without essential items.

The Government has been very clear that limiting attendance at schools and other education settings should only be done as a last resort.

38. In particular, school closures have created specific barriers to children with SEND's access to their right to education. This is really concerning. We urge the Government to look into the effect that school closures have had on young people

with SEND and to address any barriers to them returning to schools and accessing education. Where it is not in the best interests of the child to be in school, for example if they are shielding, appropriate support should be provided to them so that they can learn from home. (Paragraph 179)

At the height of the pandemic the Government changed temporarily two aspects of the law on Education, Health and Care (EHC) needs assessment and plan processes. These changes were intended to balance the needs of children and young people with SEND with the ability of local authorities, education and childcare settings and health services to respond to the pandemic. The temporary changes to the law were kept under close review during the period that they were in force, to ensure that they could be ceased as soon as they were no longer necessary. On July 31st, the third notice modifying the duty on local authorities to secure or arrange special educational and health care provision specified in children's and young people's EHC plans expired. Following this, a further notice was not issued in order to ensure the restoration of support in full for children and young people with EHC plans in advance of their return to school or college in September. We also allowed the Regulations which made temporary amendments to the timescales for EHC plans and processes to expire as planned on 25 September.

We recognise the additional challenges that children and young people with SEND have faced during the pandemic. To support all children and young people with SEND, we published guidance for full opening of schools and colleges, including separate guidance on specialist settings. This was clear that some children and young people with SEND might need specific help and preparation to return, and that staff should plan to meet these needs, for example using social stories. Understanding the impact of time outside of the classroom, what factors have driven lost attainment and how quickly it is being recovered over this academic year, is a key research priority for the Department. We have commissioned an independent research and assessment agency to provide a baseline assessment of catch-up needs for pupils in schools in England and monitor progress over the course of the year, based on existing assessments, to help us target support across the system. We are committed to improving local SEND services and have started a programme of visits by Ofsted and CQC to understand the experiences of children and young people with SEND and their families during the pandemic, and to support local areas to prioritise and meet their needs.

All children and young people, including those with SEND, should have been able to return to their educational setting in September. When a child or young person is unable to attend because they are complying with clinical or public health advice, they should have access to remote education. The Department for Education has published a Direction on remote education to clarify this legal duty for schools in relation to state-funded, compulsory school-aged children (and children under that age, whom it is expedient to educate with pupils who are of that age). We have been clear in guidance that for pupils with SEND, their teachers are best placed to know how the pupil's needs can be most effectively met to ensure they continue to make progress even if they are not able to be in school. Schools should work collaboratively with families, putting in place reasonable adjustments as necessary, so that pupils with SEND can successfully access remote education. To support schools

in delivering remote education, we have developed a range of resources and guidance including specific support for children and young people with SEND. SEND officials and expert advisers are also working closely with regional schools' commissioners via REACT (Regional Education and Children's Teams) to additionally support local authorities and schools to work together to meet the needs of children and young people during this challenging time. DfE has established nine REACT teams, covering all areas of England between them, during the pandemic, to free up local authority time and resource by pooling the knowledge held by different parts of the Department and of each local authority and streamlining the Department's interactions with them.

39. Some of these changes to children's right to education were made through press announcements alone or through the use of Notices or Directions issued under powers in the Coronavirus Act. The Government should not interfere with human rights without a clear legal base and should be clear as to whether it has legally changed children's rights or is merely changing messaging—such differences have been obscured during the Coronavirus crisis communications and this makes it difficult for parents and children to understand their rights. Whilst Government explanations, comments and press notices can be useful tools to explain legal changes, the Government must make it clear as to whether a new announcement, such as one purporting to "close schools" is made under legal powers to direct the closure of schools or is merely advisory—the rule of law is threatened if the Government obscures the legal status of its announcements. Further, legal documents—including Notices and Directions—which may interfere with human rights should be easily accessible. This is crucial for compliance with both the rule of law and human rights. The Government must ensure that all Notices and Directions interfering with human rights are published and readily available or signposted on gov.uk. (Paragraph 180)

During the coronavirus pandemic, schools were asked to reduce attendance to allow only vulnerable children and the children of critical workers on site, this was done voluntarily by schools. More recently the Government issued a Temporary Continuity Direction which makes it clear that schools have a legal duty to provide remote education for state-funded, school-age pupils who are unable to attend school due to Government guidance or legislation on coronavirus. This provides legal certainty for all involved in the education sector, including parents, teachers, and schools themselves as well as helping to protect children's rights to education. This direction included an explanatory note published on gov.uk with signposting to the full direction. The direction was announced by the Education Secretary alongside a support package to help schools deliver remote education effectively. Media announcements have, and will continue to, signpost gov.uk as a source of further information.

When making legal changes through notices or directions the Government is required to comply with the public sector equality duty (PSED) under section 149(1) of the Equality Act 2010. Any notices which have been, or continue to be, issued are considered under this duty. These notices and directions are published, and sign posted, on gov.uk and in the Gazette (including online at thegazette.co.uk). Each notice lasts no longer than a month to ensure they are kept under frequent review.

Access to Justice

40. The judicial approval of warrants is a necessary safeguard against unjustified interference with private and family life (Article 8). Extending the period of time before judicial approval of an urgent warrant is required could prolong any unjustified interferences with Article 8. As part of the review process, the Government should provide to Parliament data on how many urgent warrants have been used during the emergency period, and the timeframe within which judicial approval was obtained. The Government should also inform Parliament whether the Investigatory Powers Commissioner has made a request that the Secretary of State vary the time allowed for urgent warrants, and the outcome of this request. (Paragraph 184)

The Investigatory Powers Commissioner wrote to the Home Secretary on 26th March 2020 stating that, in his opinion, an extension to the 'relevant period' for consideration of urgent warrants was required in response to the effects the coronavirus pandemic was having, or was likely to have, on the capacity of Judicial Commissioners to carry out their functions. He therefore requested that the Home Secretary exercise her power to introduce regulations to enable such an extension. In response, the Security Minister laid The Investigatory Powers (Temporary Judicial Commissioners and Modification of Time Limits) Regulations 2020 before Parliament on 27th March 2020.

We expect the Investigatory Powers Commissioner's Office (IPCO) to publish further information on the use of the amended urgent warrant procedure in their 2020 Annual Report.

41. Whilst we welcome the expansion of technology to overcome the severe challenges facing the justice system, we are concerned to hear of these barriers to the public accessing court hearings. Virtual public galleries must be implemented to ensure scrutiny of criminal proceedings and respect for the principle of open justice. Public access should not be subject to the permission of judges. This is an important safeguard to ensure the right to a fair trial is being upheld. (Paragraph 187)

The Government is clear that open justice remains a fundamental principle of the operation of courts and tribunals, so that what happens during proceedings can be done transparently.

Since March we have seen a considerable shift to video and audio hearings, in part enabled through the legislation in the Coronavirus Act 2020. This facilitates our commitment to Open Justice. We also need to make sure that when video hearings are being used, the protections against prohibited recording and photography that apply in physical hearings also apply when a video or audio hearing is used. Ultimately it is for the judge, magistrate or panel to decide, in the interests of justice, the way in which a hearing is heard, including how observation will take place (in person at a court, over the phone or via video) and that will continue.

In all jurisdictions where there is an open hearing, in a physical setting, the longstanding arrangements for media and public access remain in place albeit with rules relating to social distancing. We ask members of the public to observe the Government guidance on social distancing to ensure the safety of themselves and others. In addition, the media, public and other interested parties can contact the court, in advance, to make arrangements to observe open hearings remotely. As before, the court may determine that a hearing should be held in private if it is in the interests of justice to do so. To facilitate this, new guidance was first published in March 2020 and has been regularly updated since to provide staff with greater clarity on procedure and process of remote observations of hearings by the public, media and interested parties. This guidance is reviewed regularly so that it always up-to-date and all staff are aware of the importance of these arrangements.

The Coronavirus Act 2020 has meant that we have been able to uphold open justice principles through remote observation and we have seen the clear benefits for both the media industry and court reporting more broadly to retaining these measures. This is an area the Ministry of Justice is exploring, in close liaison with the judiciary in order to ensure that we have the best possible understanding of future legislation.

42. The expansion of live link technology in courts is to be welcomed as a means of avoiding delays in the criminal justice system. However, if such measures are to continue, the Government must ensure that digitally excluded persons, or those who are vulnerable, can participate effectively and are not disadvantaged. The technology must also be of sufficient quality to ensure a fair trial. It is crucial that defendants are provided with a direct and confidential line of communication with their representatives, just as they would have in person in court. The public must also be able to attend virtually to ensure the principle of open justice is preserved and to allow for scrutiny of proceedings. (Paragraph 190)

Audio and video hearings provide an additional channel for conducting a hearing and should be as accessible as possible. HMCTS rolled out the cloud video platform at pace in an emergency response to COVID 19 and we continue to develop the quality of the user experience through insight and feedback from stakeholders and the judiciary. The court will always have the final say on whether it is appropriate for a live link to be used and will have to be satisfied that it is in the interests of justice to do so. The court will be required to consider all the circumstances of the case, including the views of the person who would be using the live link, and whether they will be able to take part effectively. We have also developed guidance for staff on how to support service users with disabilities, with examples of potential reasonable adjustments. In addition, guidance for internal supporters has been produced for staff and we tell users on gov.uk how to have someone to support them during a remote hearing. A technical support line has been stood up to assist remote hearing users access their hearing and staff have received training on supporting disabled people and those using assistive technology.

When a hearing notification goes out, we ask participants to tell the court or tribunal if they need support or cannot participate effectively in the audio or video hearing. The Judge can then either change the method of the hearing or reasonable adjustments will be made, wherever possible, to ensure users can participate. In the criminal jurisdiction, where the defendant has been detained and held in police custody, their remand case will ordinarily have been heard over the video link, removing the need to transport people to court, thereby reducing the risk of transmission. Similarly, if the defendant is remanded into prison custody, pending trial and/or sentence, the judge will direct whether the next hearing will be heard over the link or in person. With regard to witnesses, they can appear remotely if the judge directs and again any assessment of their ability to give their evidence remotely will be considered before the direction is given. Defendants have confidential access to their legal representatives through differing channels including in person, by telephone and via video link.

Registered intermediaries may be used to help with communication between children or vulnerable adults and those professionals involved at the investigation and trial stages of a criminal case (Youth Justice and Criminal Evidence (YJCE) Act 1999). These may be requested by the prosecutor (for prosecution witnesses) or defence counsel (for defence witnesses) to help vulnerable witnesses give their best evidence – whether during a police interview or in a criminal court. Court Appointed Intermediaries are also available to support vulnerable defendants, and services are currently undergoing review to ensure consistency of provision for all vulnerable court users.

Section 28 is one of a series of Special Measures introduced by the Youth Justice and Criminal Evidence Act 1999. Pre-recorded cross examination makes it possible for the cross examination of victims and witnesses to take place before trial. Through an expedited timetable the recording is carried out as close to the time of the offence as possible in order to help memory recall and reduce the stress of giving evidence to a full courtroom at trial. The service preserves the right of a defendant to a fair trial, whilst allowing witnesses & victims to give evidence & answer questions in a safe environment. The recording is then played back during the trial itself and the victim is not required to attend the trial in person. It can enable some victims to put their experiences behind them, rather than wait in anticipation for the trial. Significant progress has been made over the last six months to increase the scale of the s.28 service for vulnerable witnesses. s.28 is now available in 62 Crown Courts across England and Wales and rollout to all remaining Crown Courts will be completed by the end of this month.

As already set out, the Government is committed to Open Justice and in jurisdictions where there is an open hearing, in a physical setting, arrangements are in place to ensure public health risks are minimised.

43. Given these significant delays, where children turn 18 between the commission of the offence and their sentencing, they should be dealt with as children in the youth courts. (Paragraph 192)

The Government is aware of the concerns raised by the Children's Commissioner and are working to reduce the courts backlogs to reduce the number of children awaiting trial.

Her Majesty's Courts and Tribunals Service (HMCTS) in particular has taken steps to minimising delays for young people, and as part of its Covid-19 recovery plan senior officials in each region are working with Resident Judges to prioritise and support trials involving youth defendants. Youth courts are now running at near to normal sitting patterns, and it is forecast that by early 2021 the outstanding caseload will return to pre-Covid levels. Since 20 July courts have disposed of more youth cases than they have received, reducing the number of outstanding youth cases week on week. HMCTS also prioritises cases where there is a possibility that the offender may turn 18 before conviction and is working with the police to reduce the time between charge or summons and first listing to further reduce delays overall. In cases where youths are charged jointly with adults, a note recently published by the judicial lead for Youth Justice, Mr Justice Davis, states that the interests of justice test should include consideration of the likely delay if the youth is sent to the Crown Court with an adult as opposed to remaining in the Youth Court.

Where an offender turns 18 after the offence is committed but before conviction, they will be tried in adult court and the maximum sentence available will likely be higher than that which would have been available at the time the offence was committed. However, this does not necessarily lead to significantly longer sentences in practice. Youth and maturity will continue to inform sentencing decisions even after the offender turns 18, and the Sentencing Council's definitive guideline, Sentencing Children and Young People, states that in these cases courts should use the sentence that would have been given at the time the offence was committed as a starting point. It will be rare for a court to consider passing a sentence more severe than it would have passed when the offender was under 18. Overarching guidelines for sentencing adults similarly list age and/or lack of maturity as a mitigating factor when determining the sentence.

Throughout court proceedings, consideration is given to the age - both chronological and developmental - of the offender, and measures exist to ensure that those who turn 18 before trial are supported.

44. Whilst it is clear that the European Convention provides that defendants are entitled to appear before court within a reasonable time period, determining what is "reasonable" in the midst of a public health emergency is difficult. Delays are inevitable, and the margin of appreciation afforded to states during the pandemic is likely to allow for significant leeway given the exigencies of the situation, but prolonged pre-trial detention must be avoided. As trials are being adjourned for significant periods of time, extensions to custody time limits must be reviewed to ensure that persons who have not been convicted are not being held in detention for lengthy periods of time. All defendants have the right to a timely trial before an independent and impartial tribunal and this right must be respected and provided for as speedily as possible. (Paragraph 198)

COVID-19 has presented unprecedented challenges for the Criminal Justice System. The extension to Custody Time Limits (CTLs) will aid the criminal court during its continued recovery from the

pandemic and help manage demand while the Crown Court continues to recover. This is a precautionary measure. It adds a useful tool to the toolbox and creates flexibility to deal with a pandemic that might well pose new challenges as we head into the winter: we want to be ready for every eventuality and sustain the positive momentum that we can already see on court recovery. Right now, there are 257 court rooms which can be safely used for jury trials and we are listing over 300 jury trials per week and conducting thousands of other hearings each week. We have also opened 16 Nightingale Courts, providing an additional 29 rooms, 10 of which are being used for non-custodial jury trials. We are investing record amounts, with £153m to improve court and tribunal buildings – the biggest single investment in court estate maintenance for more than 20 years – and we're spending £80m on a range of emergency measures to tackle the impact of Covid-19, including the recruitment of 1,600 additional staff.

This is a temporary extension to CTLs for criminal cases awaiting trial in the Crown Court only, and the extension will be limited to 2 months (increasing from 6 months to 8 months). The provision will not be in place any longer than necessary; it will not apply retrospectively and will be in force for a time-limited period of 9 months subject to a sunset clause included in the SI.

Pre-trial detention is never considered lightly, and numerous safeguards exist to ensure that custody is used appropriately. As this is an extension of the maximum length of pre-trial detention, people will not be held for this length of time if their case is heard before the limit. This extension will minimise the risk that defendants who pose a risk to the public, or those likely to abscond and evade justice, could be released back into the community on bail before their trial can be listed. In the event this was to happen, this could significantly undermine public confidence in the justice system and have a detrimental impact on victims and witnesses.

Procedural obligations to protect the right to life

45. The Government should give serious thought to establishing a Commissioner or Office of Article 2 compliance, to ensure that the correct processes are followed in cases requiring Article 2 investigations, without relying on bereaved families for ensuring appropriate follow-up. Such a body could ensure that lessons are learned, and that best practice is disseminated to relevant bodies to prevent future unnecessary deaths (Paragraph 203)

51. The Government should consider whether there is a need for a more targeted and automated Article 2 inquiry process to enable a more cost-effective, depoliticised and focussed means for the UK to swiftly learn lessons from unnecessary deaths and discharge its right to life obligations. (Paragraph 216)

As the Government made clear in its response to the Independent Review of Deaths and Serious Incidents in Police Custody, we do not consider that a new and distinct Commissioner or Office for Article 2 Compliance is the most effective means of driving compliance with Article 2 of the European

Convention on Human Rights (ECHR). Instead the effectiveness of existing agencies in their collation and dissemination of learning in this area must be improved, rather than establish a separate Office for Article 2 Compliance to duplicate this function.

It is unclear how an 'automated Article 2 inquiry process' would operate, who would operate it, what benefit it could provide, or what legal necessity such a process would be founded on. The UK has a staged system for investigating deaths. It is that system, taken as a whole, that can ensure compliance with Article 2 where necessary. Article 2 is not so prescriptive as to require one specific form of investigation at a specific time. In fact, Article 2 allows the state a discretion as to the appropriate arrangements to make for any investigation. As was recently explained by Lord Kerr in the Supreme Court's judgment in respect of a judicial review application brought by Geraldine Finucane,[3] if an Article 2 compliant investigation is required, but has not yet taken place,

"it is for the state to decide… what form of investigation . . . is required in order to meet that requirement".

The most appropriate course of action will depend on the circumstances and cannot be 'automated'. Such decisions are of course open to judicial review.

46. The absence of any imminent inquiry into Covid-19 deaths means that in England and Wales, and in Northern Ireland, inquests will be the principal means of discharging the UK's procedural duties under Article 2. Coronial courts will have to progress as best as they can all matters requiring a procedural Article 2 investigation in a given case. (Paragraph 206)

The Government notes this recommendation but also clarifies that coroners are independent judicial office holders and the way they conduct their investigations and inquests is entirely a matter for them.

The Government recognises the Committee's concern about the burden on the coronial process and reassures the committee that there are additional statutory measures in place in respect of investigating work-related deaths of health and social care workers by the Health and Safety Executive, including where those staff died because of Covid-19. There is also a statutory duty to report such deaths to the coroner.

In addition, Medical Examiners provide independent scrutiny of causes of deaths in hospitals and facilitate feedback from the bereaved. They are senior medical doctors who are contracted to undertake medical examiner duties outside of their usual clinical duties and are trained in the legal and clinical elements of death certification processes. Also, from July, the Secretary of State for Health and Social Care gave directions that ensure NHS trusts and NHS foundation trusts seek and prioritise the services of medical examiners to scrutinise the deaths of health service and adult social

[3] https://www.supremecourt.uk/cases/docs/uksc-2017-0058-judgment.pdf

care staff from coronavirus.[4] Whenever the medical examiner becomes aware of a healthcare worker having died with Covid-19 and believes there is reason to suspect that a staff fatality was due to the coronavirus infection acquired in the course of employment, there will be a process to notify the employer of the deceased staff member. It is then for the employer to make any onward referral to the HSE (Health and Safety Executive). The failure to make such a RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) report is a criminal offence.

47. The most urgent of the procedural obligations in the Covid-19 context is to ensure that lessons are being learned as soon as possible to avoid unnecessary deaths. It is therefore crucial that some form of swift lessons learned review is undertaken as soon as feasible and incorporated in the Government's planning and response to any further waves of the pandemic. (Paragraph 210)

49. The Government should immediately organise a quick, interim review into deaths from Coronavirus to ensure that key lessons are learned as soon as possible, and in advance of any second peak in the Autumn/Winter. This review should be swift, independent and must be published. (Paragraph 212)

The Government agrees that we need to take the opportunity to learn lessons where possible. The fact that this is a new virus means a key feature of the response, from the start, has inherently been a continuous and active process of learning, reviewing, adapting, and responding - as we discover more about how the virus works considering the latest science and available data. We are continuously seeking to learn lessons from our response to Covid-19 as is customary practice with any major event or emergency. These lessons are informing our approach as evidenced by the Adult Social Care Winter Plan and the PPE Strategy.

And the Government has always been clear that there will be opportunities to look back, analyse and reflect on all aspects of COVID-19. As outlined in recommendation 14, this will include an independent inquiry at the appropriate time. Further details of that inquiry will be set out at the right time and announced in the usual way. For now, the Government is focused entirely on responding to the pandemic and saving lives.

48. Although it is reassuring to know that the Government values lesson learning and that there are a number of systems in place for regular investigations into deaths in health and care settings, this is not a sufficient response to their duties under Article 2. The systems referred to by the Government are not designed to review a complex and wide-ranging response to a pandemic. The response to the Coronavirus outbreak

4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897430/The_health_service_and_social_care_workers__scrutiny_of_coronavirus-related_deaths__directions_2020.pdf

has necessarily not been equivalent to a standard response to an individual death in NHS care. The response has affected the entire population in profound (and profoundly different) ways. Therefore, the reviews and processes in place for individual deaths are obviously ill-adapted to the sort of review required in relation to a complex and wide-ranging response to a pandemic. (Paragraph 211)

50. It is very likely that an inquiry will be needed in order to fulfil the State's obligations under Article 2 ECHR to investigate structural issues affecting Covid deaths. We welcome the Prime Minister's announcement that there will be an inquiry. If such an inquiry is to be effective in learning lessons in time to save lives, it would ideally have clear, focussed objectives and be time limited. Such an inquiry should include consideration of (i) Covid-19 deaths in a detention setting; (ii) Covid-19 deaths of healthcare/care workers and PPE; (iii) Covid-19 deaths in care homes due to early releases from hospitals; (iv) deaths where the person has been denied access to critical care; (v) Covid-19 deaths of transport workers, the police and security guards due to inadequate PPE. (Paragraph 215)

As is set out above, the Prime Minister has committed to an independent inquiry at the appropriate time.

The Government is grateful for the Committee's detailed and careful consideration of the range of complex issues involved in determining the eventual terms of reference of the independent inquiry. We will consider these detailed recommendations at the right time for such decisions to be made. When decisions are made on these matters, Parliament will of course be informed in the usual way.

Accountability and Scrutiny

52. We expect any extension to the expiry date of the Coronavirus Act provisions to be subject to parliamentary debate and approval before, not after, any extension comes into effect. The made affirmative should be avoided for such purposes. (Paragraph 221)

The Government values the role that Parliamentary Scrutiny plays. 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.

Under Section 90 of the Act, Secretary of State may make regulations to extend the Act in full, or certain provisions. However, such extensions cannot be for more than 6 months at a time. In order to extend the length of time the Act is in force for, the regulation extending it must be debated in Parliament. This must happen either before the regulations are made, or up to 40 days after. If such a debate does not occur within the 40-day period, the regulations will cease to have effect.

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 this is not always possible. The Government will endeavour to ensure that Parliament has an opportunity, if circumstances permit, to debate any such extension before the relevant Regulations come into force.

53. It is unfortunate that the Government has chosen not to use the powers within the Civil Contingencies Act 2004 or the Coronavirus Act 2020 to legislate. These pieces of legislation were designed to be used in emergencies, and contain specific safeguards to ensure that while the Government can act, its actions are subject to Parliamentary monitoring and approval. These safeguards, along with the opportunity for proper parliamentary scrutiny, are particularly important when human rights are engaged on such a massive scale. The Government must explain why it used the 1984 Act power for legislating rather than the Coronavirus Act 2020 or the Civil Contingencies Act 2004 with all the safeguards that these measures contain. (Paragraph 222)

The Public Health (Control of Disease) Act 1984, and in particular Section 45, was created specifically (and renewed as recently as 2008) with the express intention of giving Ministers the power to make regulations to combat a disease outbreak such as the current COVID 19 one. The Coronavirus Act 2020 contains very few such powers; and moreover, as our reports have made clear, these have been used but sparingly.

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. The Civil Contingencies Act has an entirely different focus and would have been less useful over the nine or so months (to date) of this pandemic than the Regulations made under the Public Health Act.

The Public Health Act, and in particular Section 45, was created specifically (and renewed as recently as 2008) with the express intention of giving Ministers the power to make regulations to combat a disease outbreak such as the current COVID 19 one.

The Government is confident that the Regulations are lawfully made under the emergency procedure in the Public Health (Control of Disease) Act 1984. They are receiving Parliamentary scrutiny in

accordance with this emergency procedure and are being debated within 28 sitting days of being made. In the recent Court of Appeal judgement in the claim for judicial review brought by Simon Dolan and others against the Secretary of State, the court found that the Secretary of State has acted within his vires when using the emergency procedure under the Public Health Act 1984 to make regulations in response to the COVID-19 pandemic.[5]

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. This was the case for the regulations introducing Local COVID Alert Levels in October, the November restrictions, and the return to a tiered approach in December, all of which were approved by both Houses of Parliament.

54. The use of emergency procedures for passing laws should be exceptional, limited to situations where the nature of the emergency itself requires the use of emergency procedures, and should require explicit justification, especially when human rights are at stake. The Government must consider whether a better balance could be struck between the flexibility of urgent legislation and the need for scrutiny by Parliament when legislating to respond to a public health crisis such as this. (Paragraph 228)

The Government is mindful that emergency procedures should be used in exception and limited situations. We have been experiencing unprecedented times, with a new virus that has moved quickly on a global scale. We need to have the powers at our disposal to respond immediately and protect public health. It has been widely acknowledged throughout this pandemic that 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. 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.

Nonetheless, as stated above, 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. This has been used successfully with the local 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 debated the national restriction regulations that were brought in for a limited period to manage increased risk of transmission. The latest regulations relating to Tiers were debated on 1 December, prior to them taking effect. We intend to maintain this approach, whenever circumstances permit.

[5] The recent judgement in Dolan, confirmed that it was open to SoS to make the regulations under Health Protection. See also Court of Appeal judgement in R (*Dolan & Ors) v SSHSC & SSE* [2020] EWCA Civ 1605 at paragraphs 71 and 77.

There have been, and will continue to be, a wide range of opportunities for Members to hold the Government to account for the handling of the Coronavirus pandemic. 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.

Since the beginning of March, in the Commons and the Lords, there have been (relating to Covid-19): 22 oral statements; 7 General Debates on Covid-19; 2 Lords debates; 69 SI debates (40 Commons, 29 Lords); 26 Lords Oral questions; 17 Lords topical questions; 6 Commons oral question sessions; 8 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. 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 assurance.

55. Major announcements should be made to Parliament rather than through news channels or other press briefings, especially when human rights of so many are to be engaged in so many ways. (Paragraph 230)

The Government recognises the importance of making announcements in Parliament to allow MPs and peers to properly scrutinise Government policy. The principle that ministerial statements on matters of importance should be made in the House of Commons prior to the notification of the media is one that is set out in Erskine May and the Ministerial Code.

The coronavirus pandemic has created unprecedented challenges to the maintenance of public health. These exceptional circumstances have required Ministers, at times, to make announcements to the public ahead of Parliament. This is done for reasons of public health and where there is an urgent need to communicate to the public to guide a change in behaviours.

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