House of Commons

Public Administration and Constitutional Affairs Committee

Coronavirus Act 2020 Two Years On

Seventh Report of Session 2021–22

Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 15 March 2022

HC 978
Published on 18 March 2022
by authority of the House of Commons

Public Administration and Constitutional Affairs Committee

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

Current membership

William Wragg MP (*Conservative, Hazel Grove*) (Chair)

Ronnie Cowan MP (*Scottish National Party, Inverclyde*)

Jackie Doyle-Price MP (*Conservative, Thurrock*)

Rachel Hopkins MP (*Labour, Luton South*)

David Jones MP (*Conservative, Clwyd West*)

John McDonnell MP (*Labour, Hayes and Harlington*)

David Mundell MP (*Conservative, Dumfriesshire, Clydesdale and Tweeddale*)

Tom Randall MP (*Conservative, Gedling*)

Lloyd Russell-Moyle MP (*Labour (Co-op), Brighton, Kemptown*)

Karin Smyth MP (*Labour, Bristol South*)

John Stevenson MP (*Conservative, Carlisle*)

Powers

The committee is a select committee, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/pacac and in print by Order of the House.

Committee staff

The current staff of the Committee are Gavin Blake (Clerk), Victoria Cummings (Committee Specialist), Dr Matthew Fright (Committee Specialist), Iwona Hankin (Committee Operations Officer), Gabrielle Hill (Committee Operations Manager), Dr Philip Larkin (Committee Specialist), Susanna Smith (Second Clerk), Dr Patrick Thomas (Committee Specialist), Christopher Watson (Assistant Clerk) and Gina Degtyareva (Senior Select Committee Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration and Constitutional Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3268; the Committee's email address is pacac@parliament.uk.

You can follow the Committee on Twitter using @CommonsPACAC.

Contents

Summary

With the 'Living with Covid' announcement from the Government on 21st February 2022, we now have a better idea of how the country will be moving away from the rules imposed by legislation like the Coronavirus Act 2020 ("the Act") during the pandemic. We also know that with the exception of the four non-temporary provisions which are being absorbed in to separate legislation, all other non-temporary provisions will fall at the expiry date of the Act (midnight on the 24th March). With that in mind, the Committee wanted to look back briefly at the Act and the scrutiny mechanisms available to Parliament.

The first of these was the sunset provision, which is more commonly known as the sunset clause. This set a two-year expiry date, (pending six-monthly re-approval), on the Act. The Committee noted that that these clauses should be carefully considered in any future legislation. The inclusion of a sunset clause is a useful legislative tool, but it can also lead to stronger and broader powers being passed through Parliament.

Within the sunset provision was a six-monthly review which allowed Parliament to vote on a motion which would keep the Act in place or not. The Committee has concerns about this procedure which was ultimately a 'take it or leave it' motion and did not allow for amendments. This had a deleterious effect on Parliament's ability to scrutinise and amend emergency provisions. Future legislation of this kind should address this.

The Committee also looked at the quality of the two-monthly reports to Parliament which the Government is required to do whilst the Coronavirus Act 2020 is in place. We received evidence which questioned the thoroughness of the reports. However, we note the recent improvements in the reports.

The Committee welcomes the Government's draft terms of reference for the Covid-19 public inquiry published on Thursday 10th March 2022. The Committee recognises the importance of the inquiry being conducted in a thorough and timely manner to ensure that clear conclusions are reached and recommended improvements to emergency planning are implemented as soon as possible, while the experience of the pandemic is fresh in the mind. We also recommend that a detailed analysis of the necessity and proportionality of each of the sections of the Coronavirus Act 2020 is included in the scope of the UK Covid-19 Inquiry to aid in the drafting of future emergency legislation.

We appreciate the difficulty of trying to legislate for events that have not yet occurred. However, we believe that the Government could allow Parliament to scrutinise draft legislation that sets out, at the very least, a framework to ensure that any legislation necessary in an emergency is up to date, fit for purpose and has sufficient scrutiny mechanisms in place.

The Committee welcomes the Government's willingness to consider the improvement of data availability going forward. We also welcome the commitment to consider how the use of guidance is used in future legislation, noting that bypassing adequate Parliamentary scrutiny is unpalatable.

1 Introduction

1. On 31st December 2019, the Wuhan Municipal Health Commission identified a cluster of cases of pneumonia. Twelve days later, on 12th January 2020, China shared the genetic sequencing of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which causes Coronavirus disease ("Covid-19").

2. When the Scientific Advisory Group for Emergencies (SAGE) was convened for a precautionary meeting on 22nd January, the minutes reflected that very little was known about the virus or its potential impact on the UK. Of what was known, the minutes state that "there is considerable uncertainty around the data, with almost certainly many more cases than have been reported".[1]

3. On 11th March 2020, the World Health Organization (WHO) declared Covid-19 to be a pandemic and called on all countries to "activate and scale up [their] emergency response mechanisms".[2]

4. The Committee's aim in producing this report is not comprehensively to analyse all aspects of the Government's response to the Covid-19 pandemic or to conduct a thorough assessment of how every single provision of the Coronavirus Act 2020 was used and the merits or demerits of such use. However, the Committee seeks to provide its view on the use of the Act, broadly speaking, at the point of its expiry, and to provide some initial thoughts for the Government to consider when conducting its internal 'lessons learned' exercises relating to the legislative response to Covid-19, and on how the Government can best prepare for future emergencies legislatively.

5. The Terms of Reference of the inquiry into the response to the pandemic were set out as follows:

- The operational effectiveness of the Coronavirus Act 2020 and its interaction with other emergency legislation, including the Public Health Act 1984 and the Civil Contingencies Act 2004.
- The evidence and procedures underpinning the six-monthly and annual renewal processes for the Coronavirus Act 2020 since its entry into force in March 2020.
- The transparency surrounding the use of data (including behavioural insights) in decision-making relating to the renewals of the Coronavirus Act 2020.
- The circumstances and process under which Section 90 of the Coronavirus Act 2020 can and/or should be used to extend measures beyond their sunset clause.

6. On Monday 21st February 2022, the Government published its 'Living with Covid-19' strategy, in which the Prime Minister noted that the majority of the non-temporary provisions in the Coronavirus Act 2020 would expire at the original two-year deadline of midnight on 24th March 2022.[3] Regardless of this announcement, this report provides important analysis of the procedural mechanisms used during the introduction of the Coronavirus Act 2020 and their suitability.

1 HM Government, Scientific Advisory Group on Emergencies, Addendum to Precautionary SAGE meeting on Covid-19, 22nd January 2020 Held in 10 Victoria St, London, SW1H 0NN, 29 May 2020

2 World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID-19, 11 March 2020

3 Cabinet office, COVID-19 Response: Living with COVID-19, 21 February 2022, para 135

7. The Committee's inquiry looked at the promised inquiry into the Government's handling of the pandemic and the areas in which this should cover. It also considered the use of data in decision-making and the possibility of improved draft legislation preparing the United Kingdom for a future emergency.

8. Finally, the inquiry analysed the use of guidance in changing the legislation around lockdowns and looked at the complexity and interpretation difficulties with the rapid changing nature of the rule changes.

2 Coronavirus Act background

9. The Government took the view in March 2020 that new primary legislation was required to manage the health threat posed by the emerging Covid-19 pandemic. The Government told us that it decided not to use the Civil Contingencies Act 2004 given that there were legislative alternatives[4] and that that Act should only be used as a "last resort".[5]

10. The Committee is concerned that instead of using the Civil Contingencies Act 2004, the Government decided to rush through primary legislation (the Coronavirus Act 2020) with minimal scrutiny, and then subsequently decided to use the Public Health Act 1984 for the majority of Covid-19 related measures, which has a weaker set of scrutiny provisions applying to the use of the powers contained in the Act.

11. The Committee notes that an independent review of the Civil Contingencies Act 2004 and its associated regulations and guidance is currently being undertaken by the National Preparedness Commission. The Committee may wish to look at the Civil Contingencies Act 2004 in more detail after outcome of this review is published.

12. The Coronavirus Bill had its first reading in the House of Commons on 19th March 2020, passed through both Houses, and received Royal Assent just three sitting days later, on 25th March 2020 (one day for remaining stages in the Commons & two days in the Lords).

13. At introduction, the Government set out that the five main purposes of the Act were:

- Increasing the available health and social care workforce;
- Easing and reacting to the burden on frontline staff;
- Containing and slowing the virus;
- Managing the deceased with respect and dignity; and
- Supporting people.[6]

14. At the Bill's Second Reading in the House of Commons, the then Secretary of State for Health and Social Care, Rt. Hon. Matt Hancock MP, told the House:

> The Bill allows the four UK Governments to activate these powers when they are needed and to deactivate them when they are no longer needed. We ask for these powers as a whole to protect life. We will relinquish them as soon as the threat to life from coronavirus has passed. This Bill means that we can do the right thing at the right time, guided by the best possible science.[7]

15. One aspect of this was the need to restrict the movement of persons and to intervene in the operation of public and private institutions. The Institute for Government has explained that the Act increased the powers of the Government to restrict or prohibit events and gatherings and to close educational establishments beyond those set out in the Public Health (Control of Disease) Act 1984.

4 Q91
5 Q51
6 Department of Health and Social Care (RCC0017)
7 HC Deb, 23 March 2020, col 48

16. The Act also makes provision to deal with the disruption that Covid-19 might cause to certain national security processes. For instance, it relaxes the judicial safeguard on the power of the Home Secretary to order the interception of communications and increases the maximum amount of time allowed before a warrant for interception is reviewed by a judge from three to twelve days. The Government stated that this was because the virus might have affected the availability of judges (and other public officials for that matter) to undertake certain tasks within statutorily defined timeframes. It also allowed police to retain fingerprint and DNA records for longer than usual, again for similar reasons.

17. Moreover, to alleviate administrative and staffing shortages, the Act introduced measures such as an expansion of video hearings in courts; additional employment safeguards to allow volunteers in the health and social care sectors to leave their main jobs and temporarily support mitigation efforts; and the emergency re-registration of health professionals who had retired.

18. The Act also postponed local, mayoral, and police and crime commissioner elections that were scheduled to take place on 7th May 2020 until 6th May 2021.

19. Under Section 89 of the Coronavirus Act 2020, most, but not all, of its provisions expire on 25th March 2022 (two years after Royal Assent). This is known as a "sunset clause".[8]

20. Sunset clauses are not novel; they set a time limit on the period during which legislation, whether an Act of Parliament or delegated legislation, remains in force. Such clauses set out that all or parts of the relevant legislation will automatically expire at a specified point in the future or after a set period of time. This has the same effect as repealing or revoking the legislation–it is no longer law, but anything done under it while it was law remains valid.

21. The Government declared on 23rd February in its 'Living with Covid-19' announcement, that "of the 20 remaining non-devolved temporary provisions [in the Act], 16 will expire at midnight on 24th March 2022".[9] In evidence to the Committee, the Secretary of State for Health and Social Care, Rt. Hon. Mr Sajid Javid MP, outlined the policy aims of the four provisions that would remain in force after the Act's inbuilt sunset:

> There is section 30, which is the suspension of a requirement to hold inquests with juries in England and Wales. This has supported coronial services throughout the pandemic in England and Wales, and we would like to keep that and make it permanent through the Judicial Review and Courts Bill, and extend it for six months so that there is no gap.
>
> The other three are sections 53 to 55: collectively, they are what I might call the remote court provisions. Those are the provisions that have allowed for court hearings to take place using audio and video links so far during the pandemic.… We would intend to make the provisions permanent through the current Bill in front of Parliament, which is the Police, Crime, Sentencing and Courts Bill.[10]

8 Coronavirus Bill: What is the sunset clause provision?, House of Commons Library, March 2020
9 Cabinet office, COVID-19 Response: Living with COVID-19, 21 February 2022
10 Q39

22. There are, however, a number of non-temporary sections that are also being retained after the expiration. These relate to areas including: Emergency registration of health professionals; Temporary registration of social workers; Health service indemnification; NHS and local authority care and support; Registration of deaths and still-births etc; Postponement of elections; National Insurance Contributions; Financial assistance for industry; and HMRC functions.[11] Mr Javid explained why these permanent provisions were necessary in his recent evidence:

> Some of the measures in the Coronavirus Act are permanent provisions—like it sounds, they stay in place permanently—because they continue to provide vital legal certainty. If I may, I will give just one example. Changes to clinical negligence indemnity were required because hospitals could not operate in the normal way, and there were some settings where they would carry out medical procedures that were not normal—for example, the local authority testing venues[12] that popped up. That change has to be in place on a permanent basis, because acts that took place using that indemnity during the two-year period still need to be protected.[13]

11 Coronavirus Act 2020, Chapter 7, Legislation.Gov.uk, accessed 15 Feb 2022
12 Originally, SoS said "vaccination centres", transcript corrected by DHSC to "testing venues"
13 Q52

3 Procedural mechanisms of the Coronavirus Act

Sunset clause

23. The Committee received evidence which questioned whether two years was the most appropriate length. For example, Professor Jeff King, Professor of Law, University College London, said:

> Many other countries used shorter and better sunset periods, both on the Covid-responsive statutes and on the emergency declarations that unlocked powers, as well as on regulations themselves. On Covid-responsive statutes, for instance, in some cases the sunset period was radically short. In France, the declaration had to be renewed initially on a monthly basis, by an Act of the legislature. In Norway, the fast-tracked corona law expired after two months. Germany's infection protection Act had to be renewed a year on.[14]

24. The Committee asked Mr Javid about the length of the sunset; he stated that the Government believes two years was the correct length and doesn't agree with legislation being on the statute book for longer than necessary:

> There was a lot of uncertainty. Therefore, I think, if you'd gone for six months or one year, it would have felt too short, for those reasons, but if you had gone for three, four or five years, it would have felt too long, for all the obvious reasons. I think it was the right balance to have a two-year date on this… While the Act itself, overall, had a two-year timeframe, many provisions within the Act were rightly falling early. As of today, we have already retired half of all the non-devolved provisions… Not with respect to this pandemic, but in my role in Government more broadly I have seen an attitude sometimes in Government where, even when you do not need something that was legislated for a while back, everyone tends to either forget about it or not think about it too much, and it stays on the statute books. I do not think that any law should really be on the books unless it is necessary.[15]

25. One of the other criticisms of sunset clauses is that they can potentially lead to broader powers. Dr Ronan Cormacain, Bingham Centre for the Rule of Law, outlined this in evidence to the Committee:

> Sunset clauses are a good thing, but they can be a double-edged sword. They are good because they put a definite endpoint to a power that is otherwise very draconian, but they also mean that Parliamentarians are more likely to vote for a draconian power on the basis that it will come to an end. The solution is… that the sunset clause should be shorter than the two years that it already is and it should be rigorously enforced.[16]

14 Q10
15 Q62–63
16 Q31

26. In response to our questioning the Secretary of State for Health and Social Care, Rt. Hon. Mr Sajid Javid MP, didn't address the point about the sunset clauses potentially leading to the passing of more draconian powers, but did admit that he thought it was "possible, yes" and a "good point" that the Government might not have got the provisions through Parliament without a sunset clause.[17]

27. **The Committee noted that sunset clauses, including their appropriate length, should be considered carefully for any future legislation. Whilst a useful legislative tool, they can allow for stronger and broader powers than would otherwise be passed by Parliament, and the Government recognised in their evidence that without the sunset clause, this legislation as a whole might not have been approved by Parliament in the way it was.**

28. ***Any future use of sunset clauses in relation to emergency legislation should come with a clear explanation about why the Government believes that the length of the sunset being proposed is proportionate to the emergency being addressed.***

Review periods

29. The Committee heard evidence which raised concerns about the lack of ability to amend the provisions that were, and were not, active at each six-monthly review process. Dr Ruth Fox, Director, Hansard Society, said that:

> There are serious questions about whether, essentially, a 90-minute debate on a "take it or leave it" proposition is the kind of subsequent accountability that Members want and need.[18]

30. Whilst being amendable in principle, the Speaker hasn't selected any amendments at any of the six-monthly reviews. Explaining his decisions, on 30th September 2020, the Speaker said:

> When I became Speaker, I made it clear that I would take decisions on matters relating to procedure guided by professional advice. I have concluded, on the basis of advice that I have received, that any amendment to the motion before the House risks giving rise to uncertainty about the decision the House has taken. This then risks decisions that are rightly the responsibility of Parliament ultimately being determined by the courts. Lack of clarity in such important matters risks undermining the rule of law. I have therefore decided not to select any of the amendments to the motion.[19]

31. Consequently, the only option was to vote down the Act as a whole; an unlikely scenario given the implication of doing so during a national emergency, as Dr Ronan Cormacain explained:

> Rather than being able to say, "We like this; we do not like that; can we have some more of this, but less of that?", it is a simple and straightforward, "Either accept everything or reject everything." With that kind of approach, most sensible Parliaments around the world will simply accept everything, because the risk of rejecting everything is too great.[20]

17 Q64
18 Q7
19 HC Deb, 30 September 2020, c331
20 Q9

32. In evidence to the Committee, Mr Javid confirmed that "Once Parliament had voted the provisions through, during the two-year lifetime Parliament could not decide on individual provisions."[21] Mr Javid also highlighted that a lot of the non-devolved provisions have been retired early. He used this argument to prove that the Government was listening to parliament at the six-monthly reviews.[22]

33. When pushed by the Committee on whether it would have been preferable for Parliament to have greater involvement and debate over individual provisions, Mr Javid admitted that this issue should be included in 'lessons learned':

> I see what you are getting at and I think that should be part of the 'lessons learned'. I think it is legitimate now to think of it in that way, and that when you have legislation like this, I guess your point is that although the overall Act is needed, could Parliament have more say on individual provisions, or the right to come back on, even if it is not all the provisions, some of the more, let us say, controversial ones? I think it is a very fair point to think about that now.[23]

34. In defence of the Government's approach and in support of the Speaker's ruling, Dr Cormacain outlined that allowing amendments could have had unintended consequences that could have affected how the regulations work as a whole:

> The nature of these emergency regulations is oftentimes very technical, and tampering with one without a full appreciation of the effect could cause a lot of problems in how the regulations work. There would be greater scrutiny by virtue of the power to amend but, equally, that could cause greater complications if an amendment has an unintended effect.[24]

35. Another point raised in written evidence to the Committee was the differences in regularity of reviews in different parts of the UK. The Law Society of Scotland highlighted that in Scotland, Ministers reviewed and reported on the Scottish Act every two months whereas in England, the review process only occurred every six months.[25]

36. **Whilst we accept the Secretary of State for Health and Social Care's defence of the length of the sunset clause, we have concerns over the lack of ability to amend provisions at subsequent points. The Committee welcomes Mr Javid's acknowledgment that Parliament not being able to amend at least some individual provisions after the initial passing of the Act should be included as part of the 'lessons learned' process. The Committee urges the Government to ensure that greater consideration is given in future to Parliament's ability to scrutinise and amend emergency provisions whilst not affecting the overall integrity of the legislation.**

21 Q67
22 Q63
23 Q69
24 Q14
25 Law Society Scotland (TYO0008)

Two-monthly reports

37. The Coronavirus Act 2020 requires Ministers to report every two months on which powers are currently active. Concerns have been raised about the two-monthly reports being "treated as a Parliamentary afterthought, something to get through Parliament, rather than a genuine attempt to engage on the merits."[26]

38. Additionally, the scope and the content of the reports have been criticised, with Big Brother Watch telling us that:

> The two-month Ministerial report is an insufficient mechanism to provide the necessary level of scrutiny. The report needs only detail which powers have been used and whether the Minister still considers them necessary. A fuller assessment of the human rights impact of the measures used, including proportionality, would ensure adequate scrutiny. Independent analysis of how and why powers have been used would also be a significant improvement.[27]

39. In oral evidence to the Committee, Dr Ruth Fox explained how the quality of the reports has improved, but also outlined the concerns of civil liberty organisations about the content of the reports:

> The quality of the two-monthly reports has improved, but it is still not ideal. For example, take the latest report that was published in November. We are expecting a subsequent one now, I guess later this month [January 2022]. The Government report on how the powers have been used, what has been turned off, when it has been expired and whether powers have been suspended. I know certain organisations, some of the civil liberties organisations for example, have concerns that the Government have not been particularly open about the critique of the use of the powers. They present a fairly positive impression.
>
> In the two-monthly reports, for example, you will not find any reference to Crown Prosecution Service assessments of the way in which the powers have been used for charging purposes under certain schedules and where it found things to be wrongly charged. That criticism and critique is not in there. You have to look elsewhere.[28]

40. In response to these criticisms, Mr Javid stated during oral evidence to this Committee that, in the reports that he has been involved in, he has strived "to provide as much information—data—and stuff as I reasonably can."[29] However, he did commit to the information provided in these reports being a subject for scrutiny when looking back and assessing any 'lessons learned':

> If you are asking, "Is it possible to provide more information?", I think we should look back at that. It is still worth looking back at each of those two-month points and revisiting, and thinking, "As part of the 'lessons

26 Q9
27 Big Brother Watch (TYO0007)
28 Q27
29 Q70

> learned', could more information have been provided?" If there was some information Government had that was not provided, it is worth thinking about why that was not done and asking whether that was the right decision in retrospect.
>
> However, I think that the reporting mechanism—the two-month reporting mechanism, then a deeper process every six months, which was like a proper review—was an important part of the scrutiny.[30]

41. **The Committee noted the improvement in the content of the two-monthly reports and welcomes the Government committing to identify further improvements that could be made as part of a 'lessons learned' inquiry. We look forward to seeing these improvements in the report of March 2022 which will cover the four provisions that are due to be renewed and the reasons behind that.**

30 Q70

4 Lessons learned and preparedness for the future

Inquiry into the Government response to the pandemic

42. The Committee welcomes the agreement of the Government to our previous recommendation that an independent inquiry into COVID-19 should be established.[31]

43. During the oral evidence session with the Committee, the Secretary of State for Health and Social Care, Rt. Hon. Mr Sajid Javid MP, referred to the forthcoming inquiry which aims to look back at the actions taken by the Government during the pandemic to see what lessons can be learned in preparing and responding to any future emergency of a similar nature. In response to a question about engagement with Parliament on these matters going forward, he told us that:

> A public inquiry will also take place and that will be much broader than just the legislation—it will look at every aspect of the pandemic. That is going to be important as well. I think there will be a lot of lessons to learn from over this entire period… There is definitely a desire and a plan to properly learn the lessons of the period of the last couple of years. That period is not over, as we know, but we must make sure that we learn the lessons. Through exactly what we are discussing today, and the scrutiny provided by this Committee and others, as well as the public inquiry, there is no doubt in my mind that there will be changes that will better prepare us for the future.[32]

44. Mr Javid also responded positively to the Committee's call for a more formal process when conducting the future inquiry:

> There is already a lot of important feedback that the Government get from various organisations and individuals the Department deals with, but if you are suggesting a more formal process, I think that is a good suggestion… We are already looking at how we can have a more structured and formal process. Parliament's role is absolutely crucial here, but we want to make sure that everyone—the wider public and other organisations—have an opportunity to comment and help to improve future legislation… I will be happy to write to the Committee and say more on that.[33]

45. On Thursday 10th March 2022, the Government published the draft terms of reference for the UK Covid-19 Inquiry, chaired by Baroness Hallett.[34] The draft terms of reference are subject to public consultation until 7th April 2022. The draft terms of reference announcement stated that the inquiry would consider consultation responses "as quickly as possible",[35] and that final terms of reference would be published following

31 Public Administration and Constitutional Affairs Committee, Fourth Special Report of Session 2019–20, A Public Inquiry into the Government's response to the Covid-19 pandemic: Government's response to the Committee's Fifth report, HC 995

32 Q60

33 Q48–50

34 UK COVID-19 Inquiry: draft terms of reference, Cabinet Office, 10 March 2022

35 Terms of reference consultation, Covid-19 inquiry, 11 March

this consultation, and consultation with bereaved families and other affected groups. However, the Government announcement did not set out any further information regarding the timetabling of the next stages of the inquiry, or an indication of its overall expected duration.

46. **The Committee welcomes the Government's commitment to a thorough and wide-ranging inquiry to learn the lessons from the Government's response to the Covid-19 pandemic. The Committee welcomes that the inquiry's draft terms of reference are being put for public consultation, and that bereaved families and other affected groups are being consulted specifically.**

47. ***In order to provide clarity to the public, the Committee calls on the Government to set out in more detail the timetable for the inquiry. We also call on the Government to require that the inquiry proceeds in a thorough but timely manner, while the experiences of the pandemic and the Government's response are fresh in the mind and to avoid institutional knowledge being lost.***

48. ***We also recommend that the UK Covid-19 Inquiry include a comprehensive analysis of the necessity and proportionality of each section of the Coronavirus Act 2020 to better aid in the future development of similar emergency legislation. Should the public inquiry not cover this, we recommend that the Department of Health and Social Care undertake this analysis and report back to this Committee and to Parliament on its findings.***

Draft Legislation for a future emergency

49. In written evidence to the Committee, the Law Society of Scotland told us that:

> An urgent Parliamentary review into the fitness of the legislative (and policy) framework for dealing with emergencies, such as pandemics, should be a priority for all the UK Legislatures and Administrations.[36]

50. One of the ways that the Government could make sure lessons are learned to ensure that the United Kingdom is prepared for any future emergencies is to have a better process around draft emergency legislation.

51. In 2016, the Department for Health led a cross-Government (12 department) exercise to test the UK's response to a serious influenza pandemic–Exercise Cygnus. As the Government has subsequently explained, "The aim was to test systems to the extreme, to identify strengths and weaknesses in the UK's response plans, which would then inform improvements in our resilience."[37]

52. Following the exercise, a draft of a Pandemic Flu Bill was prepared. This Bill was used as the basis for the Coronavirus Act 2020, but given the novelty of Covid-19, and the lack of relevant data available at the start of the pandemic, some of its measures were not fit for purpose for the emerging crisis in March 2020. The existence of this Bill and its use as the basis for the Coronavirus Act 2020 was confirmed by both UK Government

36 Law Society Scotland (TYO0008)

37 UK pandemic preparedness, Department of Health and Social Care, 5 November 2020

and devolved Ministers. The draft Pandemic Flu Bill had been worked on by the UK and devolved administrations, however its existence was not made public at any stage and it received no scrutiny, either from legal/academic commentators or parliamentarians.

53. At this inquiry's first oral evidence session in January 2022, we received evidence about Exercise Cygnus and the usefulness of draft legislation being prepared in advance of future emergencies. All three of the witnesses told us that draft legislation would be an excellent idea going forward. Professor Jeff King said:

> It would be an excellent idea not only to prepare draft legislation, which on my understanding is what happened after Exercise Cygnus, but also to publish it for pre-legislative scrutiny. That will allow many stakeholders to have a voice and allow Select Committees to report.
>
> As to the precise machinations of the scrutiny and whether there is a Joint Committee, that is an open question. I would not want to see the role of specialist Committees be muted as a result of there being an enormous focus on the report of the Joint Committee. Pre-publication and Select Committee reporting would be essential to the best regime.[38]

54. Dr Fox added:

> I agree with what has been said about pre-legislative scrutiny. That is vital. I will add one additional point. No legislature was part of pandemic planning, such as Exercise Cygnus. Given we have seen through the pandemic that management of the legislative process and the Parliamentary scrutiny process has been so vital—we have Parliamentary Government—Parliament should be a stakeholder in those exercises and should be part of the planning process, so that those issues about legislative management can be considered as part of the exercise from Parliament's perspective, not just the Government's.[39]

55. Moreover, Dr Cormacain said:

> I absolutely agree. Making legislation in advance without the time pressure and without the pressures of the pandemic itself is an excellent idea. It will avoid technical mistakes and allow for proper consideration.
>
> Secondly, it would be an excellent idea for it to be considered by Parliament in advance as well. That can only improve the quality of the legislation. There is more time to develop the policy, to draft the legislation, for Parliamentarians to scrutinise it and then to ask the sorts of sensible questions that perhaps were not thought of in the original process. "What will this mean if X happens?" Then Government, the drafters and the lawyers can go back and say, "We did not think about that. Let us see whether we can cover that point." I absolutely agree on all aspects of that.[40]

38 Q34
39 Q34
40 Q34

56. Dr Cormacain did, however, explain the difficulties with drafting emergency legislation in advance but also suggested the Government have a better 'library' of powers, not necessarily in statute that we might need:

> Perhaps the best approach would be a bespoke public health emergency Act, which would set out in more detail a fairer and more balanced set of principles and approaches allowing for proper scrutiny and better policy development. It is very hard to do that in advance. It is very hard to do that in hindsight. If we do it now, which I think we probably should, the next emergency might be slightly different.
>
> In terms of proper preparation and planning, what is necessary is nearly a menu of powers that Government could use in different situations, so these are the 10 different types of powers that we might have. If they are prepared in advance, not necessarily on the statute book, whenever a particular emergency comes the Government and the legal teams can lift them off the shelf and adapt them to that particular emergency. That sort of forward planning might be of some benefit.[41]

57. When asked about the potential of draft legislation to be 'on the shelf' in case of a new variant or another emergency happening in the future, Mr Javid explained that this was not something that the Government was currently working on.[42] When pressed on the issue, he set out the difficulties in covering all eventualities:

> I guess the challenge would be that we just don't know what the next pandemic will look like. I already talked about how the Government had planned, for lots of sensible reasons, like most of the world, for an influenza-based pandemic, and coronavirus was very different. We know how it is transmitted. The fact that it can be asymptomatically transmitted made a huge difference. But what if the next one is a fungal infection and we have planned for a covid-19 type of infection? Or what if it is an influenza type of infection? You might then run the risk that what is put before Parliament is so in draft, so uncertain, that it does not serve much purpose. That said, I am not ruling that out, but I want to set out that it is not so straightforward.[43]

58. **The Committee noted the existence of the draft Pandemic Flu Bill and believes that, although appreciating that the uncertainty around the future make it difficult, conducting pre-legislative scrutiny to provide an update and improved version of previous work would be of considerable benefit to the preparedness to respond to the next emergency.**

59. ***The Committee urges the Government to look again at the possibility of introducing a piece or range of draft legislation to allow for prior scrutiny of plans before an emergency occurs. Whilst the Committee appreciates the point made by the Secretary of State that we cannot predict what a future emergency might look like, we believe that there is still a lot of vital scrutiny work that can be done in advance to create a flexible***

41 Q17
42 Q97
43 Q97

framework which looks at parliamentary processes, best practices etc. It should be laid in Parliament and robust enough to cover a range of eventualities with only small add-ons needed to address specific emergencies.

Accessibility and use of data

60. In this Committee's Eighth Report of Session 2019–21, 'Government transparency and accountability during Covid-19: The data underpinning decisions', the Committee said:

> Ministerial accountability for ensuring decisions are underpinned by data has not been clear. Ministers have passed responsibility between the Cabinet Office and Department of Health and Social Care.[44]

61. It is still not clear where the responsibility lies in a number of areas related to the Covid-19 response. In evidence submitted to the Committee, the UK Pandemic Ethics Accelerator argued that:

> The Coronavirus Act 2020 (the Act) led directly and indirectly to the creation, expansion and interlinkage of public-private data gathering infrastructure on a huge scale…
>
> …Knowledge about the virus has been informed by the rapid building of social, institutional and technological infrastructures for gathering evidence about the virus, about the impact of the virus, and about positive and negative impacts of legislative interventions mitigating and adapting to the virus have been established. These include:

- NHS branded public-private Test and Trace infrastructure such as the NHS Covid-19 App.
- Extensions to the NHS App, for instance the integration of vaccination certificates new links to GP data systems.
- Priority shielding and vaccine priority lists which integration national level data, local authority data and GP data systems.
- National, European, and global immunity certification systems that operate at and within national borders
- New, expanded, and experimental datasets collated by the Office for National Statistics.
- New and expanded data infrastructure across health and social care sectors such as the Care Home Capacity Tracker.
- Expansion of public research based public health surveillance such as the ZOE Covid-19 Symptom Study App.

44 Public Administration and Constitutional Affairs Committee, Eighth Report of Session 2019–21, Government transparency and accountability during Covid-19: The data underpinning decisions

- The interlinkage and sharing of data between public health and researcher, departments and public services including public health data facilitated by COPI notices[45]

62. In oral evidence to the Committee, Mr Javid explained that data was owned by different departments and not within one depository.[46] He went on to explain that, in terms of deciding about the provisions in the Coronavirus Act 2020 continuing or not, the data is brought together in a cross-Government committee meeting (the "Covid-O" Cabinet Committee):

> Throughout the pandemic, and certainly in the time that I have been involved over the last eight months, that has been co-ordinated through a committee chaired by the Cabinet Office, called Covid-O, which meets on a regular basis with all the relevant Ministers. My Department would almost always be represented, because it is ultimately related to the pandemic, but other Departments would be involved—most of the large Departments, and certainly those that have an interest in the Coronavirus Act, which is almost every Department. There would be a paper prepared by the Cabinet Office, with input from the lead Department and any other Departments. Any advice from, let's say, the UK Health Security Agency, or any other relevant advice would all be in a single paper. That would be presented as a single view of all the facts and data, and then the committee of Ministers would make the decision.[47]

63. The Committee has also previously called on the Government to set out thresholds for the decision-making process around the Coronavirus restrictions. In a letter from the Chair to the then Chancellor of the Duchy of Lancaster, Rt. Hon. Michael Gove MP in July 2021, the Committee wrote:

> The Committee has been consistently clear that, in our view, the Government should publish the thresholds for decisions when they are made to increase the transparency of decision-making and correspondingly to increase public trust and confidence in those decisions. We are therefore disappointed with the Government's refusal to publish thresholds on which decisions on key elements of the return to normality [are made] and strongly encourage the Government to reconsider this decision, and to publish the thresholds for the key decisions in the roadmap.[48]

64. In oral evidence, Mr Javid addressed the subject of thresholds:

> There is no individual single threshold or trigger. We look at a number of metrics and data. Even when we look at those metrics, I don't think there is any single threshold.[49]

45 UK Pandemic Ethics Accelerator (TYO0004)
46 Q86
47 Q87
48 Letter from William Wragg to the Chancellor of the Duchy of Lancaster in response to the Government's second response to PACAC's Eighth Report, Government transparency and accountability during Covid-19: The data underpinning decisions, 6 July 2021
49 Q88

65. When pushed by the Committee on openness and transparency around the data underpinning decisions made, Mr Javid conceded that improvements could be considered in this area as part of the 'lessons learned' inquiry:

> We must be as transparent as possible and publish as much data as we can. A lot of data was shared, and it increased over time; there was the dashboard data, the SAGE information and minutes, and the vaccination evaluations that we did. We were very quick to publish all that data, partly because we wanted to share it with parliamentarians, but also because we wanted to share it with the world—NHS data could help many other countries. One of the points that you make, and I respect it—it is a very fair point—is that, as we learn lessons from this, we must think about whether more data could have been released in a more structured and regular way. That is a very fair point.[50]

66. **The Committee welcomes the Government's willingness to consider whether the publication of data in future emergencies could be improved.**

67. ***We urge the Government to include this in the inquiry looking at the pandemic response and commit to set out a more consistent approach to publishing all data that inform decision making, including how those data have been utilised, in any future emergency.***

The Government's use of guidance vs legislation during the pandemic

68. In oral evidence to the Committee, concerns were raised about the use of guidance instead of, or in spite of, existing primary or secondary legislation. Specifically, Dr Cormacain noted that:

> That is, in constitutional terms, a slightly worrying development. If something is important, Parliament should debate it, pass it, agree it and enact it as a proper law. There is this tendency to push things more towards guidance, which does not have the proper Parliamentary scrutiny and approval that it really deserves.[51]

69. Meanwhile, Dr Fox highlighted a regulation that has changed but not been updated in the actual regulation:

> One of the most egregious examples of where the Government have legislated via regulation was in relation to the self-isolation requirements. Last autumn, we had to isolate for up to 10 days. In effect this has now been changed by guidance, but the Government have not updated the law. Prior to Christmas, the Government advice that was being promulgated through all their communication channels, press conferences, social media and so on was that you had to isolate for seven days, and that was then reduced to five days. They did not actually change the regulation. The regulation still says 10 days.
>
> That is a pretty egregious example that has remained in place for several weeks and has not been rectified. It is an example of what happens when

50 Q90
51 Q26

> you have this discrepancy. How does that affect the police and the courts in terms of what they are expected to do? A Minister simply saying, "We expect the courts to be guided by the advice we put out and by the press release that has been issued in relation to the guidance," does not seem to me to be an appropriate way to conduct things.[52]

70. In response to whether or not using guidance to change self-isolation regulations was the correct thing to do, Mr Javid said:

> Yes, in certain circumstances. Let me explain. Take that specific example, where the law at the time was "You selfisolate for 10 days subject to reasonable excuse", and then the Government wanted to move very quickly and say that having a negative lateral flow test on day 5 and day 6 was a reasonable excuse to leave isolation early. If that was the quickest way to do that and reduce restrictions on people's lives—parliamentarians clearly understand why you want to reduce restrictions if things are getting better—I think it was the right way to do it, as long as the Government were very clear and transparent about that … For the kinds of changes you are talking about, a number of times I would have gone to Parliament, or other Ministers would have gone to Parliament, and explained those changes and why they are happening. Parliamentarians would have been given the opportunity to ask questions about them.[53]

71. Parliament wasn't able to scrutinise decisions before they were made. When pressed by the Committee that this approach did not afford Parliament the expected opportunity to debate fundamental aspects of legislation that it had previously approved, Mr Javid said:

> As I have said, and as I absolutely believe, there will be a lot of lessons to learn from this process. During the last couple of years, the Government have tried very hard to strike the right balance between acting quickly and responsibly in an emergency situation and making sure that parliamentarians are very involved in that process, as they should be. Again, as I said to you earlier, there will be lessons to learn from this.[54]

72. In addition to the way the rules have been changed, another criticism that has been raised is around the difficulty with their interpretation. The Consortium on Practices of Well-being and Resilience in BAME Families and Communities (CO-POWeR) noted that:

> The police have struggled to "interpret" them [police powers] and the guidance, which changes when in and out of lockdown, and during the tiered system implemented during the first half of 2021 in the UK.[55]

73. The complexity of the combined legislative and guidance landscape was also raised in oral evidence along with the rapid changing nature of the of rules during the pandemic which made it difficult to interpret. Dr Ronan Cormacain explained this and gave an example:

---

52 Q27
53 Qq73–80
54 Q82
55 Professor Iyiola Solanke (Chair in EU Law and Social Justice at University of Leeds); Professor Gargi Bhattacharyya (Professor in Sociology at University of East London); Dr Monica Bernal Llanos (Research Fellow at University of Leeds) (TYO0009)

> In general, if we want individuals to be able to implement the law better, it needs to be less complex and it needs to change less rapidly. If a law changes on a Monday, changes on a Wednesday and then changes on the following Monday, there is simply no chance that anyone, any official, will be able to know what the law is at any point in time. There is that complexity and the rapidity of change.
>
> I will give you one concrete example of the difficulty of implementing emergency laws. There was a very controversial funeral in Northern Ireland of a terrorist. A lot of the things that happened around the funeral seemed to be in breach of the law and there was a lot of public outrage around that. The police and the Public Prosecution Service looked at it and actually said in their statement, "The law has changed so frequently and at the last minute that we cannot possibly justify bringing a prosecution here." That is a failure not of the police or the prosecutors. That is a failure of the people who make the law.[56]

74. **We welcome the commitment from the Secretary of State to learn lessons from the way the Government legislated during this pandemic and expect it to be a subject of investigation within the upcoming inquiry into the Government's COVID-19 response. The Committee has noted that the use of guidance to change the law and thus avoiding Parliament is concerning and not a practice that should continue.**

75. ***The Committee calls on the Government to carefully consider the use of guidance in future emergencies to ensure maximum clarity and minimal complexity for the public and law enforcement. The Government should ensure that future legislation of this type doesn't allow for the ability to use guidance to overrule key elements of legislation, as this leads to confusion.***

56 Q16

Conclusions and recommendations

Procedural mechanisms of the Coronavirus Act

1. The Committee noted that sunset clauses, including their appropriate length, should be considered carefully for any future legislation. Whilst a useful legislative tool, they can allow for stronger and broader powers than would otherwise be passed by Parliament, and the Government recognised in their evidence that without the sunset clause, this legislation as a whole might not have been approved by Parliament in the way it was. (Paragraph 27)

2. *Any future use of sunset clauses in relation to emergency legislation should come with a clear explanation about why the Government believes that the length of the sunset being proposed is proportionate to the emergency being addressed.* (Paragraph 28)

3. Whilst we accept the Secretary of State for Health and Social Care's defence of the length of the sunset clause, we have concerns over the lack of ability to amend provisions at subsequent points. The Committee welcomes Mr Javid's acknowledgment that Parliament not being able to amend at least some individual provisions after the initial passing of the Act should be included as part of the 'lessons learned' process. The Committee urges the Government to ensure that greater consideration is given in future to Parliament's ability to scrutinise and amend emergency provisions whilst not affecting the overall integrity of the legislation. (Paragraph 36)

4. The Committee noted the improvement in the content of the two-monthly reports and welcomes the Government committing to identify further improvements that could be made as part of a 'lessons learned' inquiry. We look forward to seeing these improvements in the report of March 2022 which will cover the four provisions that are due to be renewed and the reasons behind that. (Paragraph 41)

Lessons learned and preparedness for the future

5. The Committee welcomes the Government's commitment to a thorough and wide-ranging inquiry to learn the lessons from the Government's response to the Covid-19 pandemic. The Committee welcomes that the inquiry's draft terms of reference are being put for public consultation, and that bereaved families and other affected groups are being consulted specifically. (Paragraph 46)

6. *In order to provide clarity to the public, the Committee calls on the Government to set out in more detail the timetable for the inquiry. We also call on the Government to require that the inquiry proceeds in a thorough but timely manner, while the experiences of the pandemic and the Government's response are fresh in the mind and to avoid institutional knowledge being lost.* (Paragraph 47)

7. *We also recommend that the UK Covid-19 Inquiry include a comprehensive analysis of the necessity and proportionality of each section of the Coronavirus Act 2020 to better aid in the future development of similar emergency legislation. Should the public*

inquiry not cover this, we recommend that the Department of Health and Social Care undertake this analysis and report back to this Committee and to Parliament on its findings. (Paragraph 48)

8. The Committee noted the existence of the draft Pandemic Flu Bill and believes that, although appreciating that the uncertainty around the future make it difficult, conducting pre-legislative scrutiny to provide an update and improved version of previous work would be of considerable benefit to the preparedness to respond to the next emergency. (Paragraph 58)

9. *The Committee urges the Government to look again at the possibility of introducing a piece or range of draft legislation to allow for prior scrutiny of plans before an emergency occurs. Whilst the Committee appreciates the point made by the Secretary of State that we cannot predict what a future emergency might look like, we believe that there is still a lot of vital scrutiny work that can be done in advance to create a flexible framework which looks at parliamentary processes, best practices etc. It should be laid in Parliament and robust enough to cover a range of eventualities with only small add-ons needed to address specific emergencies.* (Paragraph 59)

10. The Committee welcomes the Government's willingness to consider whether the publication of data in future emergencies could be improved. (Paragraph 66)

11. *We urge the Government to include this in the inquiry looking at the pandemic response and commit to set out a more consistent approach to publishing all data that inform decision making, including how those data have been utilised, in any future emergency.* (Paragraph 67)

12. We welcome the commitment from the Secretary of State to learn lessons from the way the Government legislated during this pandemic and expect it to be a subject of investigation within the upcoming inquiry into the Government's COVID-19 response. The Committee has noted that the use of guidance to change the law and thus avoiding Parliament is concerning and not a practice that should continue. (Paragraph 74)

13. *The Committee calls on the Government to carefully consider the use of guidance in future emergencies to ensure maximum clarity and minimal complexity for the public and law enforcement. The Government should ensure that future legislation of this type doesn't allow for the ability to use guidance to overrule key elements of legislation, as this leads to confusion.* (Paragraph 75)

Formal minutes

Tuesday 15 March

Members present:

Mr William Wragg, in the Chair

Jackie Doyle-Price

Mr David Jones

John McDonnell

Karin Smyth

Draft Report (*Coronavirus Act 2020 Two Years On*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 75 read and agreed to.

Summary agreed to.

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

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

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

[Adjourned till Tuesday 22 March 2022 at 10.30am

Witnesses

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

Tuesday 25 January 2022

Professor Jeff King, Professor of Law, University College London (UCL); **Dr Ronan Cormacain**, Senior Research Fellow, Bingham Centre for the Rule of Law; **Dr Ruth Fox**, Director, Hansard Society Q1–36

Thursday 24 February 2022

Rt Hon Sajid Javid MP, Secretary of State, Department of Health and Social Care Q37–97

Published written evidence

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

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

1 Big Brother Watch (TYO0007)

2 Department of Health and Social Care (TYO0010)

3 Janes, Dr Laura (Legal Director, The Howard League for Penal Reform) (TYO0006)

4 Jasson, Mr Allen Leslie (Technical Author, Enactor Ltd) (TYO0001)

5 Law Society Scotland (TYO0008)

6 St John Ambulance (TYO0003)

7 Solanke, Professor Iyiola (Chair in EU Law and Social Justice, University of Leeds); Bhattacharyya, Professor Gargi (Professor in Sociology, University of East London); and Bernal Llanos, Dr Monica (Research Fellow, University of Leeds) (TYO0009)

8 UK Pandemic Ethics Accelerator (TYO0004)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	The role and status of the Prime Minister's Office	HC 67
2nd	Covid-Status Certification	HC 42
3rd	Propriety of Governance in Light of Greensill: An Interim Report	HC 59
4th	Appointment of William Shawcross as Commissioner for Public Appointments	HC 662
5th	The Elections Bill	HC 597
6th	The appointment of Rt Hon the Baroness Stuart of Edgbaston as First Civil Service Commissioner	HC 984

Session 2019–21

Number	Title	Reference
1st	Appointment of Rt Hon Lord Pickles as Chair of the Advisory Committee on Business Appointments	HC 168
2nd	Parliamentary and Health Service Ombudsman Scrutiny 2018–19	HC 117
3rd	Delivering the Government's infrastructure commitments through major projects	HC 125
4th	Parliamentary Scrutiny of the Government's handling of Covid-19	HC 377
5th	A Public Inquiry into the Government's response to the Covid-19 pandemic	HC 541
6th	The Fixed-term Parliaments Act 2011	HC 167
7th	Parliamentary and Health Service Ombudsman Scrutiny 2019–20	HC 843
8th	Government transparency and accountability during Covid 19: The data underpinning decisions	HC 803