Written evidence from the Department of Health and Social Care (RCC17)

Public Administration and Constitutional Affairs Committee
Responding to Covid-19 and the Coronavirus Act 2020 inquiry

1. What should be the criteria for maintaining the Coronavirus Act 2020, as a whole, and any regulations made under it?

a. How, and by whom, should these criteria be measured and judged?

Response

Covid-19 is a global emergency and created an unprecedented challenge for the whole of the UK. The Act was introduced, with widespread support, to underpin a wide range of actions that form a vital part of the national response to the pandemic. The measures will be kept in place if they continue to be needed. Many of these risks remain, although on a day to day basis, some of the issues have reduced in extent and/or severity.

We will therefore keep those elements of it that continue to be necessary – either currently or where future risks still exist. In the run up to the six-month review in September, we will give colleagues across Government a set of forward planning assumptions that they can use in developing an evidence base to underpin consideration as to whether or not they need to keep their part of the Act. These planning assumptions are currently being developed, and will be led by the best available scientific evidence. A wide range of advice and analysis continues to be considered to inform decision-making. This scientific advice is based on an analysis of the best available data, as described (inter alia) in the SAGE minutes.

We will then form a collective view on this going forward. It is likely, however, given that significant risks remain, that we will conclude that the most sensible way to manage this risk is by keeping almost all – if not all – of the Act, including those provisions that have not yet been used at all, or that have not yet been used comprehensively.

But this is an unprecedented emergency, and the test of necessity therefore also includes the need to guard against what might happen next with the course of the disease. Some of the provisions in the Act have not yet been used, but they might still be needed if there is, for example, a second peak, or a challenging winter 'flu season. For some provisions in the Act, it is reasonable to conclude that we will need to keep them even if they have not been used, simply because – as envisaged when the legislation was drafted, they might need to be.

Although the Act was taken through Parliament primarily by DHSC Ministers, it was a cross Government effort, spanning the full range of Departments involved in responding to the Coronavirus outbreak. Many of its provisions were taken through at the behest of the Devolved Administrations. It remains therefore a key component of an agreed UK wide response to the challenge of tackling this unprecedented crisis.

Although the Secretary of State for Health and Social Care is charged with assuring Parliament about whether the non-devolved provisions need to remain in force, this is part of a cross departmental, UK-wide response; and the assessment of appropriateness is a collective, consensual one, based on the best available scientific evidence.

The rationale for the Act

The significant challenges that we envisaged at the outset (these are set out in more detail in our action plan of 3 March - https://www.gov.uk/government/publications/coronavirus-action-plan) included a risk that the health and social care workforce might be adversely affected by the disease, as well as other vita pubic services. It also included measures to ease the burden on the citizen. The Act therefore enabled action in five key areas:

1. increasing the available health and social care workforce – for example, by removing barriers to allow suitably experienced people, such as recently retired NHS staff and social workers to return to work (and in Scotland, in addition to retired people, allowing those who are on a career break or who are social worker students to become temporary social workers)

2. easing and reacting to the burden on frontline staff – by reducing the number of administrative tasks they have to perform, enabling local authorities to prioritise care for people with the most pressing needs, allowing key workers to perform more tasks remotely and with less paperwork, and introducing a power to suspend individual port operations if necessary for the security of the border

3. containing and slowing the virus – to manage the spread of coronavirus, the Coronavirus Act 2020 ("the Act") provides Public Health Officers (PHO) with powers to help control the spread of coronavirus in the UK

4. managing the deceased with respect and dignity – by enabling the death management system to deal with increased demand for its services

5. supporting people – for example, by allowing individuals to receive Statutory Sick Pay from day one, and supporting businesses, for example by providing powers that will ensure the governments of the UK are able to support the food industry to maintain supplies.

On 11 May, the Government set out how we would manage what we hope will be the remaining stages of this outbreak, and beyond, in our strategy 'Our plan to rebuild: The UK Government's COVID-19 recovery strategy'. The degree of risk was set out in the strategy:

> "Deaths in the community are falling. However, real challenges remain on the operational support required for managing the virus. The Government cannot yet be confident that major adjustments now will not risk a second peak of infections that might overwhelm the NHS. Therefore, the Government is only in a position to lift cautiously elements of the existing measures."

An indicative roadmap is provided within 'Our Plan to Rebuild', but the precise timetable for these adjustments will depend on the infection risk at each point, and the effectiveness of the Government's mitigation measures like contact tracing. Over the coming weeks and months, the Government will monitor closely the effect of each adjustment, using the effect on the epidemic to gauge the appropriate next step.

Parliamentary accountability

The Act gives us the legislative tools to enable us to continue to mount an effective response to the pandemic. As we said throughout proceedings on the Act, in both Houses, we will use

these powers sparingly, and if we can be confident that we will not need them again, we can and will sunset them early.

In addition to the reporting arrangements set out in Part 2 of the Act, there are other safeguards involving debate and review. After the Act has been in force for six months, and if the Government wants the relevant provisions to remain in force, the Government must arrange for a motion to be debated and voted on by the House of Commons. We expect that a similar debate will take place in the House of Lords. If the motion is rejected by the Commons, a Minister must make regulations causing the temporary provisions in the Act to expire within 21 days of the rejection. This process does not apply to provisions within devolved competence.

A similar proceeding will take place – in both Houses – after 12 months.

Unless explicitly renewed by Parliament, the Act will sunset after two years.

2. Is the framework for Parliamentary scrutiny under the Coronavirus Act 2020 appropriate?

Response

Part 2 of the Act sets out a range of transparency, reporting and accountability mechanisms, which attracted widespread and generous support from all sides of both Houses. It achieves the right balance between taking necessary action swiftly, and facilitating transparency and Parliamentary scrutiny

We have been guided by a realistic view that the disease creates risks to capacity in both Government and Parliament. We believe that the mitigating actions we have taken (eg. regular reporting and debating, and an 'it will expire unless' approach to sunsetting) are helping to ensure that Parliament continues to be given the opportunity to hold the Government to account – but without preventing swift and necessary action being taken to combat the pandemic and support people through it.

In taking the Coronavirus Act 2020 through Parliament using the expedited procedure – though widely acknowledged to be the right thing to do – we recognised that its unprecedented scale and reach required additional safeguards. We agreed with the Official Opposition to include a mechanism to enable the House of Commons to take a view every six months on whether the provisions of the Act should remain in force.

This was in addition to the other safeguards:

1. Ministers will report to Parliament every two months on how these powers have been used in tackling C19;

2. there will be a 'progress to date' debate in both Houses after 12 months (ie. using the sixth two-monthly report);

3. and then an affirmative SI would have to be passed allowing for extensions of up to 6 months at a time (if necessary) after the 24 month sunset.

Section 97 of the Coronavirus Act 2020 requires the Secretary of State to publish a report every 2 months on the status of the non-devolved provisions of the Coronavirus Act. The first such report was published on 29 May:

https://www.gov.uk/government/publications/coronavirus-act-report-may-2020

3. Should the "lockdown regulations" have been included as part of the Coronavirus Act 2020?

Response

As all Members will have seen since Parliament returned from the extended Easter break, there have been many opportunities to debate the lockdown regulations. This is in part because the regular reviews of their effectiveness have meant that new sets of regulations have been made about once every three weeks, to reflect the changing pattern of the disease. That would obviously preclude their being set on the face of the Act. The flexibility afforded by the regulation making powers in the Public Health (Control of Disease) Act 1984 provides the regulation making power that we need to combat this pandemic. It was therefore not necessary to replicate these regulation making powers in the (temporary) Coronavirus Act, nor to include those regulations in the Act.

The "lockdown" Regulations set out that a review of these restrictions and requirements must take place at least every 28 days (previously 21 days) to ensure they continue to be necessary to prevent, protect against, control or provide a public health response to the incidence or spread of infection in England. The Secretary of State for Health conducts the review, following discussion with other Ministers and always guided by officials and experts, ensuring the measures continue to be both proportionate and necessary. The Secretary of State also keeps the restrictions and requirements under constant consideration outside of the 28- day review process.

It is precisely to enable such a flexible, dynamic and agile approach to outbreak management that Parliament created the regulation making power in the 1984 Act. There was therefore no need to replicate the power in the Coronavirus Act; and it would have removed all such flexibility if the Regulations themselves had been set into the Act. We are therefore confident that the current arrangements maximise flexibility; and accountability and transparency.

4. ***Would the Civil Contingencies Act 2004 have been more an appropriate Act to use to introduce Covid-19 legislation?***

Response

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

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

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

Covid-19 was, and remains, as the Chancellor of the Duchy of Lancaster said in his oral evidence to the Public Administration and Constitutional Affairs Committee on 29 April, a 'developing threat'. The government agreed that preparation for a Coronavirus Bill was necessary and proportionate. It has always been the case that if it is possible to introduce measures for use in an emergency by conventional legislative means then the provisions in the Civil Contingencies Act (CCA), which was the product of work done by the Civil Contingencies Secretariat, should not be used.

5. ***To what extent should the Government's five tests for easing lockdown also inform whether to end the temporary provisions of the Coronavirus Act 2020?***

Response

The legislation is intended to be time-limited for two years – and not all of these measures were brought into force immediately. The Act allows the UK Government and devolved administrations to use these new powers when they are needed, and, crucially, to end their use once they are no longer necessary, based on the best available scientific advice.

Separately, as stated in 'Our Plan to Rebuild', the Government set out five tests that should be satisfied before the UK Government moves on to Step Two of the plan, and then on to Step Three alongside consideration of further detailed scientific advice provided closer to the time.

The intention is that our progress on meeting the five tests, as well as consideration of additional scientific assessment, will in time allow us to relax restrictions. At that time, we would expect to be able to end the provisions of the Act, using the early sunset facility.

While it is clear that the five tests necessitate some controls remaining in place, we will continue to rely upon the various legislative powers to ensure a comprehensive and effective level of protection for the public's health in all parts of the UK.

a. How should those five tests be evidenced?

Response

Scientific advice and analysis have underpinned the Government's policy making in the development of current social distancing measures and 'Our Plan to Rebuild'. A wide range of advice and analysis has been considered to inform the most recent review of the measures. We will continue to be guided by science in our approach. The Scientific Advisory Group for Emergencies (SAGE) regularly publishes its research and assessments, as well as minutes of their discussions.

Slides and datasets are presented in the No10 coronavirus press conferences and published on Gov.uk, which outline key evidence that the Government is considering. Slides for the press conference on 28 May - which evaluated whether the five tests had been sufficiently met to move to Step Two in the recovery roadmap - are published here –

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888353/2020-05-28_COVID-19_Press_Conference_Slides.pdf.

b. What should be the triggers for re-introducing lockdown measures?

Response

Each step in 'Our Plan to Rebuild' may involve adding new adjustments to the existing restrictions or taking some adjustments further. Easing of some restrictions may only be fully possible significantly later depending on the reduction in numbers of infections.

An indicative roadmap is provided within 'Our Plan to Rebuild', but the precise timetable for these adjustments will depend on the infection risk at each point, and the effectiveness of the Government's mitigation measures like contact tracing. Over the coming weeks and months, the Government will monitor closely the effect of each adjustment, using the effect on the epidemic to gauge the appropriate next step.

Restrictions may be adjusted by the devolved administrations in Scotland, Wales and Northern Ireland at a different pace because the level of infection - and therefore the risk - will differ. Similarly in England, the Government may adjust restrictions in some regions before others.

To chart our progress and to avoid going back to square one, we have established a COVID Alert System, with alert levels determined by the four Chief Medical Officers and informed by a new Joint Biosecurity Centre.

The Joint Biosecurity Centre will track a variety of local and national sources of data in order to identify local spikes in infections. They will proactively identify specific actions to address these spikes and work in partnership with local agencies – for example, advising

Ministers, businesses and local authority decision makers to close schools or workplaces where there is a significant increase in infection rates to reduce the risk of further infection locally. In this way it is envisaged that there will be significantly less need to reintroduce national lockdown measures as infection outbreaks will primarily be controlled at the local level, but where necessary we will have clear data and escalation routes to make national decisions if needed.

c. *What data is available to make these decisions? Is that data sufficiently robust?*

Response

As stated above, a wide range of advice and analysis continues to be considered to inform decision-making. This scientific advice is based on an analysis of the best available data, as described (inter alia) in the SAGE minutes.

The Prime Minister is regularly briefed on progress against a wide range of indicators, including:

- ☐ Reporting from the NHS Test and Trace service;
- ☐ The capacity of the NHS;
- ☐ The rate of C19 infection and deaths, including outbreaks in care homes;
- ☐ Operational challenges, including PPE supply and demand; and
- ☐ The risk of a second outbreak.

Furthermore, consistent with statutory requirements, social distancing measures and any subsequent easements are reviewed periodically.

We will continue to be guided by the science in our approach and publish information when it is appropriate to do so.

6. *To what extent should there be alignment throughout the UK on the response to Covid-19, and ending lockdown restrictions?*

    a. *To what extent is there scope for divergence in policy for Devolved Administrations and local authorities, in particular in relation to easing lockdown restrictions and Covid-19 testing capacity?*

Response

Covid-19 is a global emergency and created an unprecedented challenge for the whole of the UK. It has required government response across different policy areas and at different levels of government. Public health is a devolved matter in Scotland, Wales and Northern Ireland so many of the health measures implemented across the UK in response to Covid-19 fall within the competence of the devolved administrations. Local authorities in England are also responsible for the provision of a range of public services that form an important part of the

Covid-19 response. Significant economic measures have been implemented by the UK Government and benefit the whole of the UK.

The UK Government and devolved administrations have worked closely together to ensure that the response to this crisis is coherent and effective across the UK while meeting the needs of the individual nations. This includes taking opportunities to adopt common elements, where it makes sense to do so. This is to ensure that messages and advice to citizens, businesses and communities are clear and consistent; so that businesses across the UK can benefit from a robust UK economy; and so that everybody feels supported, regardless of where they live.

Ministers and officials from the devolved administrations have attended the majority of COBR meetings on Covid-19 since January 2020. At the outset of the crisis the UK government established a Cabinet Committee structure to deal with the economic, health, public sector and international consequences of Covid-19 on the whole of the UK. Ministers and officials from the Scottish Government, Welsh Government and Northern Ireland Executive have been invited to participate in these discussions where appropriate and have been involved in the agenda-setting, development of papers and briefing whenever possible. This engagement has also been supplemented by significant engagement with the devolved administrations at both official and Ministerial levels led by UK government departments. These have proven to be productive conversations, aiming to ensure that a UK-wide approach was taken on a comprehensive range of issues and catering for the needs of all nations while respecting the devolved administrations' respective competences.

Throughout the response the UK Government has ensured that decision-making has been supported by UK-wide data wherever possible. The UK government has also focused on ensuring that communications are clear, so that every citizen, regardless of where they live in the UK, understands what is expected of them and what support is available to them.

On Covid-19 testing capacity, although health policy is devolved, the UK government has worked closely with the devolved administrations at both a strategic and operational level to align and enhance testing capacity and ensure that all those that need a test can get one. The UK government has procured testing capacity on behalf of the whole of the UK, enabling all nations to benefit from this economy of scale and purchasing power. Testing capacity has been allocated to each nation, with devolved administrations determining how testing is prioritised and managed in each nation. The UK Government and the devolved administrations have worked together on testing to simplify and enhance the experience of citizens across the UK. Those eligible for testing can ask for a test through the NHS website, regardless of where in the UK they are based.

In addition, all administrations are working closely and constructively to ensure that the testing and tracing approaches taken by each nation are compatible, while meeting the needs of the individual nations. This includes taking opportunities to adopt common elements, where it makes sense to do so.

In relation to easing lockdown restrictions there has been broad alignment while allowing for tailoring of policy to national and local need. Ministers from the devolved administrations have attended COBR meetings where decisions relating to social distancing measures have been taken and the UK Government and devolved administration ministers and officials have regularly engaged on plans to ease measures ahead of decisions being taken. The four Chief Medical Officers (CMOs) in the UK are in regular contact and have worked closely together throughout the Covid-19 response, particularly ahead of decisions being taken. Representatives from the devolved administrations attend the Scientific Advisory Group for Emergencies (SAGE).

Although the four nations have taken a common approach to lifting restrictions, based on scientific advice, it has in some cases been necessary to relax measures at different times in different parts of the UK. Devolution has allowed decision-making that reflects the spread of the epidemic across the different nations. As set out in our roadmap to recovery, the virus may be spreading at different speeds across the UK and measures may need to change in different ways and at different times.

As we move towards a more targeted approach to suppressing the virus, this tailoring of approach within continued close cooperation between the UK government and the devolved administrations will remain a key focus.

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