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

The Institute for Government is an independent, non-partisan think tank whose mission is to improve the effectiveness of government across the UK. Since March 2020 the Institute has conducted research into several aspects of the government response to coronavirus, and we are pleased to have the opportunity to contribute to this inquiry.

This evidence is supplementary to the previous submission made by the Institute for Government, published by the committee on 30 June 2020, and oral evidence given to the committee on 16 June 2020.¹

This submission addresses certain aspects of the Legislative Response to Coronavirus. Specifically, it responds in detail to question 6 of the call for evidence, relating to the issue of alignment and divergence between the four nations of the UK in their response to coronavirus.²

We also include a brief response to question 5, relating to the data being used by UK ministers to decide when and whether to ease lockdown restrictions.³

Legislative Response

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?
2. Is the framework for Parliamentary scrutiny under the Coronavirus Act 2020 appropriate?
3. Should the “lockdown regulations” have been included as part of the Coronavirus Act 2020?
4. Would the Civil Contingencies Act 2004 have been an appropriate Act to use to introduce Covid-19 legislation?

For the Institute for Government’s response to these questions, please refer to our previous written and oral evidence, as mentioned above.

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?
   a. How should those five tests be evidenced?
   b. What should be the triggers for re-introducing lockdown measures?
   c. What data is available to make these decisions? Is that data sufficiently robust?

² The response to question 6 has been drafted by Jess Sargeant, Alex Nice and Akash Paun.
³ The response to question 5 has been drafted by Gavin Freeguard.
It is not entirely clear what data is being used to assess conditions against the government’s five tests or whether these numbers are actually informing decisions. How is the question of whether the NHS can cope being judged, for example? What does a ‘sustained and consistent’ fall in the death rate actually mean? What is a ‘manageable level’ for the rate of infection?

While the government has published a dashboard collating numbers of cases of coronavirus and deaths, it has not publicly brought together all the numbers for all five tests. It may be that government internally has robust figures, but this is not obvious from what it has published, or indeed some of the decisions it has made (such as easing lockdown measures while the infection rate, as measured by R, was still one or higher, something the prime minister focused on in his press conference in early May⁴). Also, extensive reports in the media suggest that even if central government has robust data on any of its tests, this is not being made available to local government leaders where it could have operational value.

The government should be more open about the numbers it is using, the models in which they are using them and how all of this is affecting decision making.

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

An effective response to Covid-19, and to ending lockdown restrictions, has required and will continue to require coordination between the four governments of the UK. However, coordination does not imply uniformity between the four administrations in terms of the specific decisions they take at any given time. As we argued in our paper, A four-nation exit strategy, there are legitimate reasons why ministers in each part of the UK might reach different conclusions about how best to tackle coronavirus.⁵

Firstly, differences in epidemiological factors may require a territorially differentiated approach. The lockdown regulations impose unprecedented restrictions on people’s daily lives and therefore it important to ensure these are proportionate to the risk posed by the coronavirus. Scientific evidence that the level of risk differs in each part of the UK would justify different restrictions.

For example, on 10 May, following the second statutory review of the lockdown regulations, the prime minister announced the easing of restrictions in England, but Scotland, Wales and Northern Ireland decided not to make any changes at that point.⁶ In explaining their decisions, the first ministers of Scotland and Northern Ireland both pointed to evidence of a higher R rate within their territories than in England, which suggested that Scotland and Northern Ireland were at a different stage of the virus’s progression.⁷

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⁷ On 7 May, the first minister of Northern Ireland said that the R rate was 0.8, “higher than parts of England where the virus emerged earlier than it did here and is more in keeping with the situation in Scotland and Wales” and the first minister of Scotland said that the R was higher in Scotland than other parts of the UK and
More recently, Northern Ireland has eased lockdown restrictions at a faster rate than other parts of the UK. As the chart below demonstrates, Northern Ireland has had significantly fewer deaths per 100,000 people than England, Scotland and Wales. Evidence of a higher infection rate in Leicester was also the principal reason for the UK government’s decision to impose a local lockdown in that area. Announcing the measures on 29 June, the Secretary of State for Health and Social Care, Matt Hancock, said that the “7-day infection rate in Leicester is 135 cases per 100,000 people, which is 3 times higher than the next highest city” and accounted for “around 10% of all positive cases in the country” over the preceding week.⁸

Figure: Weekly COVID 19 deaths per 100,000 of the population

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Decisions about the easing of lockdown involve difficult trade-offs between public health, the economy, and wider social factors. These are matters of political judgement, and ministers in each part of the UK – who are accountable to their own legislatures and voters – may legitimately come to different conclusions about the appropriate course of action. Furthermore, as the peak of the crisis has passed, this has created a certain amount of ‘headroom’ for ministers to ease restrictions, and the different governments may decide to prioritise different easements based on local economic and political factors.

Specific considerations also apply in Northern Ireland, where shared geography with the Republic of Ireland and a high level of cross-border movement – including an estimated 23,000-30,000 cross-border workers⁹ – mean that on some issues the Northern Ireland Executive has sought to coordinate actions with the Irish government, as well as with the other governments of the UK.

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The nature of and reasons for divergence should be clearly explained and communicated. There is evidence to suggest that some of the differences in the lockdown rules across the UK have resulted in confusion amongst the public that risks undermining compliance with the rules.\textsuperscript{10} For instance, it was reported that hundreds of English residents attempted to cross the Welsh border for leisure purposes after the UK Government had lifted restrictions in England, only to be turned away or even fined by Welsh police for being in breach of the different regulations in force in Wales.\textsuperscript{11}

Confusion about which rules apply where has been exacerbated by the failure of politicians, particularly in the UK government, and parts of the media, to make clear the territorial extent of certain policies and announcements. For example, the prime minister’s ‘address to the nation’ on 10 May did not make clear that changes to the lockdown restrictions applied to England only.\textsuperscript{12}

Divergence can also create complications for people who live close to, or regularly cross, the borders between England and Scotland and Wales. For example, in his 10 May statement to the nation, the Prime Minister “actively encouraged” people who could not work from home to return to their place of work. However, it was unclear whether this message applied to the estimated 90,000 people who live in Wales but work in England, and therefore remained subject to the Welsh government’s five-mile travel limit.

To avoid confusion and unintended consequences, ministers in each part of the UK should carefully weigh the arguments for divergence against the additional complexities this may create, and all four government should work together to identify and mitigate any difficulties that may arise.

A decline in intergovernmental working appears to have led to a rise in unmanaged divergence. At the beginning of the crisis there was close cooperation between the four government. UK and devolved ministers met regularly at meetings of the COBRA emergency committee and in four Ministerial Implementation Groups (MIGs) that were set up to coordinate different aspects of the policy response to the pandemic.\textsuperscript{13} In this period many key policy announcements, including the initial imposition of the lockdown, were closely coordinated.

However, this pattern of close joint working has come to an end. COBR has ceased to meet regularly, and in June 2020 the UK Government disbanded the MIGs, seemingly without consulting the devolved administrations, replacing them with new coronavirus cabinet committees to which devolved ministers are not expected to be invited.

These structural changes coincide with an apparent decline in the willingness of the UK Government to work in partnership with the devolved administrations. This was

\textsuperscript{10} Stephen Cushion et all, ‘Different lockdown rules in the four nations are confusing the public’, London School of Economics, 22 May 2020, \url{https://blogs.lse.ac.uk/covid19/2020/05/22/different-lockdown-rules-in-the-four-nations-are-confusing-the-public/}.


\textsuperscript{12} ‘Prime Minister’s statement on coronavirus (COVID-19)’, Prime Minister’s Office, 10 May 2020, \url{https://www.gov.uk/government/speeches/pm-address-to-the-nation-on-coronavirus-10-may-2020}.

demonstrated in early July by the disagreement over the list of countries exempt from quarantine restrictions. Although the UK Transport Secretary claimed that UK-wide agreement over the list was sought, Scottish Ministers claimed that they were only given 30 minutes notice. The Welsh First Minister expressed similar frustration, calling engagement with the UK government “shambolic”\(^\text{14}\). Subsequently, the Welsh Government and the Northern Ireland Executive adopted the UK government’s approach, but the Scottish Government has announced its own slightly different ‘green list’ of safe countries. This means that people travelling from certain countries will face different rules upon arrival in the UK depending on whether their destination is England or Scotland.

The UK Government should commit to holding more regular meetings with devolved counterparts, whether through new bodies created specifically to discuss the response to coronavirus (as replacements for the MIGs), or by involving devolved ministers in at least some meetings of the new coronavirus-focused cabinet committees. The Government should also commit to consulting the devolved administrations prior to taking further decisions about easing the lockdown in England.

The purpose of strengthening intergovernmental working, would not be to compel all parts of the UK to march in lockstep, but to ensure that when divergence does take place, it is for clear reasons rather than being an accidental by-product of poor intergovernmental communication. Better communication between the administrations should also help to ensure that each government can better prepare for any potential ‘spillover effects’ of decisions taken by another administration, such as the impact on cross-border workers and communities.

\(^a\) 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?

Key policy areas such as health and education are extensively devolved so legally, there is significant scope for policy divergence between the four parts of the UK. The regulations that imposed the restrictions\(^\text{15}\) were made separately in the UK, Scottish and Welsh Parliament and the Northern Ireland Assembly. As introduced, these regulations were very similar, all requiring certain businesses to close, preventing people from leaving their home without “reasonable excuse”, and prohibiting public gatherings of more than two people.

However, over time, ministers in each part of the UK have amended the regulations in different ways, creating differences in the legal position in each nation. For example, for several weeks it was the case that in Scotland and Northern Ireland a person could not leave their home without a “reasonable excuse”, whilst in Wales and England the restrictions were


\(^{15}\) The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020 made under the Public Health (Control of Disease) Act 1984; The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, made under the Coronavirus Act 2020; The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 made under the Public Health Act (Northern Ireland) 1967.
placed, respectively, on leaving the local area, and on staying overnight anywhere other than one’s place of residence.

**There has been significant divergence in both the timing and nature of announcements on the easing of lockdown.** For example, from 13 May two people from different households were permitted to meet outdoors in England; a week later the Northern Ireland Executive permitted up to 6 people to meet outdoors. The Scottish and Welsh Government did not allow meetings between two households until 29 May and 1 June respectively; the Scottish Government imposed an 8-person limit, whilst in Wales there was no maximum.

In May, all four governments published their own documents outlining their approaches to easing lockdown. These documents differed in both content and structure. The UK Government outlined a phased approach to lifting lockdown restrictions in England, which comprised three steps.¹⁶ The Northern Ireland Executive’s ‘pathway to recovery’¹⁷ set out five steps, the Scottish Government set out four phases¹⁸ and the Welsh Government uses a traffic-light system.¹⁹ The table in annex 1 sets out some of the key milestones in the reopening up of shops, public amenities and hospitality and leisure venues in each part of the UK. Broadly speaking Northern Ireland and England have lifted lockdown restrictions sooner than Scotland and Wales.

**However, there are several factors that have limited the scope for divergence.** Firstly, science advice to all governments of the UK is closely coordinated. Each administration has its own Chief Medical Officer and Chief Scientific Advisor, but they are in regular contact, meeting up to three times a week and supported by a range of clinical groups with representatives from all four governments.²⁰ Representatives from each of the four governments also participate in the SAGE advisory structure, either as participants or observers, and the scientific advisory groups established by the devolved administrations – such as the Scottish Advisory group and the Welsh Technical Advisory Cell (TAC) – apply models developed in SAGE to the Scottish and Welsh contexts. Therefore, the scientific advice received by ministers in each of the four parts of the UK is broadly consistent, and this is likely to have reduced the chances of more significant divergence.

Second, although many of the policy levers required to respond to the coronavirus are devolved, others are reserved – most notably including economic interventions such as the UK-wide schemes to support furloughed workers and the self-employed. Westminster control

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of these measures is likely to act as a constraint on divergence since it would be very difficult for the devolved administrations to maintain or reimpose lockdown restrictions after the Treasury withdraws funding.

Finally, public opinion may have led to a tendency towards convergence, as ministers have come under pressure to replicate policy announcements in other parts of the UK. For example, there were reports that the UK government’s decision to introduce ‘support bubbles’ on 13 June, allowing single people or parents to join with one other households, was in part motivated by a letter written to a No 10 advisor. Nonetheless, the move was copied, with some minor differences, in Northern Ireland from 13 June, and Scotland from 19 June. The First Minister of Wales come under increasing pressure to justify why Wales hadn’t followed the rest of the UK, until he eventually announced that two households could form a bubble from 6 July.

In areas such as testing, there has been voluntary coordination and cooperation between the four parts of the UK, despite some confusion about whether the UK Government’s daily testing target applied to the whole UK or only to England. Following agreement with the devolved administrations, the Department of Health and Social Care is responsible for procuring tests on a UK-wide basis. As a result, the devolved administrations receive a share of tests, rather than additional funding through the Barnett formula. The UK government has been responsible for funding and establishing testing centres in Scotland, Wales and Northern Ireland.

The devolved administrations remain responsible for testing policy in such centres, for example, in determining eligibility for testing. This has produced some divergence in testing eligibility: for example, the UK Government extended testing to all those with symptoms over 65 in England on 28 April, the same access was not available in Wales until 18 May. However, there continues to be close coordination between the four administrations in this area, particularly at an operational level. For instance, members of the public are able to book tests in all part of the UK through the NHS website.

In addition to differences between the four nations of the UK, there is the potential for divergence at the local level in the response to coronavirus. However, powers to impose ‘local lockdowns’ are held mainly by central government, so the scale of local divergence will be decided by ministers.

Local authorities’ powers to restrict residents’ and businesses’ activity are limited. Local authorities must apply for a court order if they wish to close premises or organisations. Local

25 https://www.nhs.uk/ask-for-a-coronavirus-test
authorities do not have the power to restrict freedom of movement or gatherings, and they
cannot compel schools to shut without the authorisation of ministers.

The UK government can implement a local lockdown in England by making new health
protection regulations under the Public Health (Control of Disease) Act 1984 – the legislation
under which it enacted the nationwide lockdown on 26 March. The devolved
governments can also impose local lockdowns in Scotland, Wales and Northern Ireland
respectively using secondary legislation.

The secretary of state for health could also delay the easing of existing social distancing rules
in parts of England. This was the case in Leicester, where restaurants, cafes and pubs
remained shut after 4 July, the date they opened across the rest of England. Devolved
ministers in Scotland, Wales and Northern Ireland could take a similar approach.26

**The government has made confusing statements about who is responsible for
implementing ‘local lockdowns’ in England**

On 29 June, Matt Hancock, the health secretary, announced that new restrictions would be
introduced in Leicester in response to a spike of infections. Local authorities in Leicester
stated that there had been insufficient consultation and data-sharing prior to the decision.
Local authorities were not even able to confirm the precise area covered by the new
restrictions until the morning of 30 June, the day that businesses and schools were asked to
close.27

On the day that the restrictions in Leicester were announced, the Prime Minister’s spokesman
was quoted as saying that ‘either the local authority or Public Health England have a range of
powers themselves to allow them to contain local outbreaks – for example they can impose
temporary closures of public spaces, businesses and venues.’28 However, the powers to close
businesses and other venues in Leicester were exercised by central government.

Mr Hancock also stated in the House of Commons on 29 June that when clusters of cases
were identified in individual premises, these would be dealt with ‘largely by the local
Director of Public Health, who has statutory powers to close individual organisations.’29 We
have not been able to identify the statutory powers to which Mr Hancock was referring.

**We recommend that the government clarify who is responsible for the decision to bring
in local lockdowns in the future, and how the powers to do so will be exercised.**

The UK and devolved governments may need to introduce local restrictions in other parts of
the country in response to localised outbreaks. We recommend that the government publish a

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26 A summary of the powers of central and local government in relation to local lockdowns is available here:
https://www.instituteforgovernment.org.uk/explainers/coronavirus-local-lockdowns

27 Robert Mendrick, ‘Leicester lockdown row grows as Mayor warns of fears for city’s health and economy’,
The Telegraph, 30 June 2020, https://www.telegraph.co.uk/news/2020/06/30/leicester-lockdown-row-grows-
mayor-warns-fears-citys-health/.

28 Jedidajah Otte, ‘UK coronavirus: Hancock announces local lockdown for Leicester – as it happened’, The
interview-mark-sedwill-civil-servant-coronavirus-covid-19-latest-updates-please?page=all&%3Ablock-
5ef9f50a8f084054c8433fc4.

Department of Health and Social Care, 29 June 2020, https://www.gov.uk/government/speeches/local-action-to-
tackle-coronavirus.
clear framework for local lockdowns in England, setting out the criteria that would trigger their introduction, who is responsible for taking the decision, and the role to be played by ministers and councils. This would increase the predictability and certainty of the law for citizens and businesses and improve coordination between central and local government.

*July 2020*
Annex 1: Easing of lockdown restrictions in each different part of the UK (correct as of 10 July 2020)

<table>
<thead>
<tr>
<th>Activity</th>
<th>England</th>
<th>Scotland</th>
<th>Wales</th>
<th>Northern Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outdoor sports courts</td>
<td>10 May</td>
<td>29 June</td>
<td>22 June</td>
<td>8 June</td>
</tr>
<tr>
<td>Garden centres</td>
<td>13 May</td>
<td>29 May</td>
<td>1 June</td>
<td>18 May</td>
</tr>
<tr>
<td>Waste and recycling centres</td>
<td>13 May</td>
<td>1 June</td>
<td>28 May</td>
<td>Open from 18 May</td>
</tr>
<tr>
<td>Outdoor markets</td>
<td>1 June</td>
<td>29 June</td>
<td>22 June</td>
<td>8 June</td>
</tr>
<tr>
<td>Car showrooms</td>
<td>1 June</td>
<td>29 June</td>
<td>22 June</td>
<td>8 June</td>
</tr>
<tr>
<td>Professional/elite sports</td>
<td>1 June</td>
<td>22 June</td>
<td>No date announced</td>
<td>15 June.</td>
</tr>
<tr>
<td>Sporting events ‘behind closed doors’</td>
<td>1 June.</td>
<td>No date announced</td>
<td>No date announced</td>
<td>With limited spectators from 11 July.</td>
</tr>
<tr>
<td>Schools</td>
<td>Schools permitted to open to reception, Year 1 and Year 6 from 1 June. Year 10 and Year 12 from 15 June. Primary and secondary schools to reopen with full attendance in September.</td>
<td>To open under a blended model, of at-school &amp; at-home learning from 11 August, at the start of the autumn term.</td>
<td>Schools reopened to all year groups, 1/3 pupils at time, from 29 June</td>
<td>Pupils in years 7, 12 &amp; 14 to return part time on 24 August. Part-time for all students in step 4 from September.</td>
</tr>
<tr>
<td>Places of worship for private prayer</td>
<td>13 June</td>
<td>22 June</td>
<td>22 June</td>
<td>20 May</td>
</tr>
<tr>
<td>Other non-essential retail</td>
<td>15 June</td>
<td>Street-access retail open from 29 June. Shopping centres and malls expected reopen on 13 July</td>
<td>22 June</td>
<td>Non-food retail outlets with lower frequency of customers to open from 8 June. All shops open from 12 June.</td>
</tr>
<tr>
<td>Cinemas &amp; theatres and other leisure activities</td>
<td>Open from 4 July except for “close proximity”</td>
<td>Zoos and garden attractions can open from 29 July</td>
<td>Outdoor attractions open from 6 July. Indoor visitor</td>
<td>Drive in cinemas &amp; performances permitted from</td>
</tr>
<tr>
<td><strong>venues</strong> such as nightclubs.</td>
<td>June. Cinemas expected to reopen from 15 July.</td>
<td>attractions to reopen 13 July, cinemas to reopen 27 July.</td>
<td>20 May. Rehearsals to resume in step 3 Visitor attractions to open 3 July. Cinemas and bingo halls open from 10 July</td>
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<tr>
<td><strong>Cafes, pubs and restaurants</strong></td>
<td>Reopened on 4 July, indoor hospitality limited to table-service only.</td>
<td>Outdoor hospitality such as beer gardens expected to reopen 6 July. Indoor hospitality to reopen on 15 July</td>
<td>Outdoor areas to open from 13 July. No date for indoor opening. Reopened on 3 July, alcohol may be sold with food indoors. Pubs that do not sell food will only be permitted to open outdoors.</td>
<td></td>
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<tr>
<td><strong>Holiday accommodation</strong></td>
<td>To open 4 July</td>
<td>Self-catering accommodation expected to reopen 3 July. All other holiday accommodation expected to reopen on 15 July</td>
<td>Self-contained holiday accommodation to reopen 11 July. Tourist accommodation with shared facilities to reopen 25 July Campsite, caravan parks and self-catering accommodation to open from 26 June. Hotels to open from 3 July.</td>
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<tr>
<td><strong>Places of worship</strong></td>
<td>4 July</td>
<td>15 July</td>
<td>13 July</td>
<td>29 June</td>
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<tr>
<td><strong>Indoor sports facilities permitted to reopen</strong></td>
<td>Indoor gyms, swimming pools and sports facilities to reopen from 25 July.</td>
<td>No date announced</td>
<td>No date announced Indoor gyms to open from 10 July. Other indoor sports courts to open from 7 August</td>
<td></td>
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</tbody>
</table>