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Convenor
Covid-19 Committee
The Scottish Parliament
Edinburgh
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8 June 2020

Dear Murdo

The Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020

During the Committee evidence session on the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020, on Wednesday 3 June, I offered to provide a written response to Adam Tomkins' question about why the amending regulations remove references to the "emergency period".

As you know, the principal regulations set out that the lockdown restrictions must be terminated as soon as they are no longer necessary. Previously, the process to terminate a restriction was through the issuing of a direction. The amending regulations change that termination process and replace it by a duty to terminate through regulations. Under the previous approach there was no role for Parliament in authorising the use of a direction. The change that is being made gives Parliament a clear role in scrutinising and approving future regulations to make changes to lockdown. This change underlines our commitment to ensuring that there is full and proper scrutiny by Parliamentary of the Government's use of Coronavirus powers. I believe that the Committee should welcome this reinforcement of our accountability to Parliament.

The removal of the term 'emergency period' is a technical change consequent on the replacement of the use of directions with regulations. The removal of the term in no way suggests any general reduction in our approach.

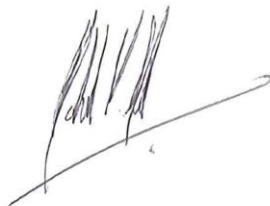
The issue in detail is as follows. Regulation 2(1) of the principal regulations, as originally made, defined the "emergency period" as beginning when the Regulations come into force and ending, in relation to a restriction or requirement, on the day and at the time specified in a direction published by the Scottish Ministers terminating the requirement or restriction.

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Given that the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020 have the effect of providing that the termination of a restriction or requirement is to be by amending or revoking regulations, rather than by direction, the references to the “emergency period” are now otiose. Also, the use of regulations means that a restriction or requirement that is revoked will be omitted from the face of the regulations. This would not have been the case if such a measure was terminated by direction alone. For directions, it was necessary to include references to the emergency period in order for the Regulations to be clear about when any terminated restriction or requirement would cease to have effect.

In accordance with regulation 2(2) of the Regulations, the Scottish Ministers continue to have a duty to review the restrictions and requirements imposed by the Regulations at least once every three weeks. The amendments made do not alter the duty in any way. The amendments also do not alter the expiry of the Regulations. The Regulations will, unless amended, expire on 26 September 2020.

I hope the Committee finds this information helpful. I will shortly provide another written response giving further detail on some points raised by members in relation to betting shops and recreational flying.



MICHAEL RUSSELL

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